

Marriage, Civil Unions & Their Termination In Connecticut

A Guide to Resources in the Law Library

Compiled

by

Lawrence Cheeseman
Connecticut Judicial Branch
Law Libraries

Second Edition

“All light is valuable on a darken path.”
DeQuincy

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These guides are provided with the understanding that they represent only a starting point to legal research.

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Table 1 Quick References

	Annulment	Dissolution	Legal Separation
Effect	§ 2.1	§3.0	§ 4.1
Grounds	§ 2.2	§ 3.1 et seq.	§ 4.2
Multiple grounds		§ 3.1.3	§ 3.1.3
Defenses	§ 2.3	§ 3.1.4	§ 3.1.4
Procedures (general)	§ 2.4 et seq.	3.2 et seq.	§ 4.3
Jurisdiction	§ 2.4.1	§ 3.2.1	§ 3.2.1
Service of process	§ 2.4.2	§ 3.2.2	§ 3.2.2
Parties	§ 2.4.3	§3.2.3	§3.2.3
Pleadings	§ 2.4.4	3.3 et seq.	4.4 et seq.
Complaint	§ 2.4.4	3.3.1	§ 4.4
Motion to dismiss	§ 3.3.2	§ 3.3.2	§ 3.3.2
Motion to strike	§ 3.3.3	§ 3.3.3	§ 3.3.3
Answer/ Cross Complaint	§ 3.3.4	§ 3.3.4	§ 3.3.4
Amendment to complaint	§ 3.3.5	§ 3.3.5	§ 3.3.5
Waiting periods	§ 2.1	§ 3.2	§ 4.3

Chapter 1

Marriage

in Connecticut

A Guide to Resources in the Law Library

- “[M]arriage . . . is defined as the union of one man and one woman.” 2005 Conn. Acts 10 (Reg. Sess.)
- “The State makes itself a party to all marriages, in that it requires the marriage contract to be entered into before officers designated by itself, and with certain formalities which it has prescribed.” Dennis v. Dennis, 68 Conn. 186, 196 (1896).
- “There are two types of regulations concerning the validity of a marriage: 1) Substantive requirements determining those eligible to be married and 2) The ‘formalities prescribed by the state for the effectuation of a legally valid marriage.’ Carabetta v. Carabetta, 182 Conn. 344, 347 (1980). The formality requirements are of two sorts: 1) a marriage license and 2) solemnization.” Ross v. Ross, No. FA97 0162587 S (Ct. Super. J.D. Stamford-Norwalk, Aug. 10, 1998), 22 Conn. L. Rptr. 637.
- “Marital status, of course, arises not from the simple declarations of persons nor from the undisputed claims of litigants. . . . It is rather created and dissolved only according to law.” Hames v. Hames, 163 Conn. 588, 592-593, 316 A.2d 379 (1972).
- “A marriage ceremony, especially if apparently legally performed, gives rise to a presumptively valid status of marriage which persists unless and until it is overthrown by evidence in an appropriate judicial proceeding.” Perlstein v. Perlstein, 152 Conn. 152, 157, 204 A.2d 909 (1964).
- **Effect of annulment:** “Our annulment statute itself (46-28), although referring to ‘void or voidable’ marriages, provides that the court may grant alimony, and custody and support orders for any minor child, as in the case of divorce. Public Acts 1963, No. 105, amended the section by adding a sentence declaring that ‘[t]he issue of any void or voidable marriage shall be deemed legitimate.’ These provisions are irreconcilable with the theory that even a marriage claimed to be void is, or upon the rendition of a decree of annulment retroactively becomes, an absolute nullity *ab initio* so that nothing in the way of a status or res ever flowed from the marriage.” Perlstein v. Perlstein, 152 Conn. 152, 159, 204 A.2d 909 (1964).
- “A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction.” Conn. Gen. Stats. § 46b-40(a) (2005).

Section 1.1

Who May Marry

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to person who may marry in Connecticut

DEFINITIONS:

- “Connecticut has its statutory scheme in place to implement its policy of delineating the relationships between persons under our jurisdiction who may properly enter into marriage. It has been for many years and still remains the declared public policy of the state.” Singh v. Singh, 213 Conn. 637, 656, 569 A.2d 1112 (1990).
- **Affinity vs. Consanguinity:** “Affinity is ‘the connection existing in consequence of marriage between each of the married persons and the kindred of the other.’ *In re Bordeaux’s Estate*, 37 Wn.2d 561, 565, 225 P.2d 433 (1950); annot., 26 A.L.R.2d 271.” *Lavieri v. Commissioner of Revenue Services*, 184 Conn. 380, 383, 439 A.2d 1012 (1981). Affinity is distinguished from consanguinity, which is relationship by blood.” Remington v. Aetna Casualty & Surety Co., 35 Conn. App. 581, 587, 646 A.2d 266 (1994).

STATUTES:

- CONN. GEN. STAT. (2005)
 - § 46b-21. **Kindred who may not marry.** “No man may marry his mother, grandmother, daughter, granddaughter, sister, aunt, niece, stepmother or stepdaughter, and no woman may marry her father, grandfather, son, grandson, brother, uncle, nephew, stepfather or stepson. Any marriage within these degrees is void.”
 - § 46b-29. **Marriage of persons under conservatorship or guardianship**
 - § 46b-30. **Marriage of minors** “(a) No license may be issued to any applicant under **sixteen years of age**, unless the judge of probate for the district in which the minor resides endorses his written consent on the license. (b) No license may be issued to any applicant under **eighteen years of age**, unless the written consent of a parent or guardian of the person of such minor, signed and acknowledged before a person authorized to take acknowledgments of conveyances under the provisions of section 47-5a, or authorized to take acknowledgments in any other state or country, is filed with the registrar. If no parent or guardian of the person of such minor is a resident of the United States, the written consent of the judge of probate for the district in which the minor resides, endorsed on the license, shall be sufficient.” [Emphasis added]
 - § 53a-72a. **Sexual assault in the third degree: Class D Felony.**
 - § 53a-190. **Bigamy: Class D felony.**
- 2003 CONN. ACTS 188 § 6 (Reg. Sess.). An act concerning premarital blood

test requirements and marriage certificates. “(Effective October 1, 2003) Sections 19a-27, 46b-26 and 46b-27 of the general statutes are repealed.

LEGISLATIVE:

- SUSAN PRICE-LIVINGSTON, HISTORY OF CIVIL MARRIAGE IN CONNECTICUT: SELECTED CHANGES, Connecticut General Assembly, Office of Legislative Research, OLR Backgrounder [2002-R-0850](#) (October 15, 2002).
- LAWRENCE K. FURBISH, CONNECTICUT LAW ON MINORS AND MARRIAGE AND SEXUAL RELATIONS, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 95-R-1476 (December 19, 1995).
- SUSAN PRICE-LIVINGSTON, MARRIAGE LAWS IN CONNECTICUT AND MEXICO, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 2002-R-0627 (July 22, 2002).

CASES

- Greten v. Estate Of Mack, No. CV 03 0285543-S (May 11, 2004), 2004 Conn. Super. LEXIS 1248, 2004 WL 1194199 (Conn. Super. 2004). “The plaintiff relies on *Carabetta v. Carabetta*, supra, 182 Conn.[344,] 349, which held that a marriage that is defective for want of a required statutory formality, such as a marriage license or solemnization of the ceremony, does not necessarily void the marriage. The issue before the court in *Carabetta* was ‘whether, under Connecticut law, despite solemnization according to an appropriate religious ceremony, a marriage is void where there has been noncompliance with the statutory requirement of a marriage license.’ *Carabetta v. Carabetta*, supra, 182 Conn. 345. The court recognized that ‘[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe a statutory requirement, this court has held in an unbroken line of cases since . . . [1905], that such a marriage, though imperfect, is dissoluble rather than void.’ (Citation omitted.) *Id.*, 349. The court then concluded that ‘the legislature’s failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid.’ *Id.* Similarly, in *Hames v. Hames*, 163 Conn. 588, 316 A.2d 379 (1972), the court reaffirmed that ‘[t]he policy of the law is strongly opposed to regarding an attempted marriage . . . entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void.’”
- Rosengarten v. Downes, 71 Conn. App. 372, 384, 802 A.2d 170 (2002). “In determining that the legislative intent in the adoption of subdivision (17) of § 46b-1 was not to make Connecticut courts a forum for same sex, foreign civil unions, we, therefore, conclude that the text itself, the rules of court, the legislative history, the strong legislative policy against permitting same sex marriages and the relationship between other statutes, legislative enactment of state policy and the common law are all in accord with that view.”
- State v. George B., 258 Conn. 779, 796, 785 A.2d 573 (2001). “Accordingly, we affirm the trial court’s ruling that an adopted granddaughter falls within the degree of kinship set forth in §§ 53a-72a (a) (2) and 46b-21.”
- Singh v. Singh, 213 Conn. 637, 656, 569 A.2d 1112 (1990). “In conclusion, a marriage between persons related to one another as half-uncle and half-niece is void under General Statutes 46b-21 and 53a-191 as incestuous.”
- State v. Moore, 158 Conn. 461, 466, 262 A.2d 166 (1969). “The element of consanguinity appears in all relationships enumerated in 46-1 [now 46b-21] except the relationship of stepmother or stepdaughter and stepfather or stepson. The question at once arises as to why, in its enumeration of relationships which do not include the element of consanguinity, the General Assembly saw fit to include only those of a stepparent or a stepchild. In the application of the criminal law, it would be an unwarranted extension and

presumption to assume that by specifying those relationships the legislature has intended to include others which lack the element of consanguinity. Had the legislative intent been to include what, in this case, would commonly be called a relationship of niece-in-law and uncle-in-law, it would have been a simple matter to say so In the absence of such a declaration, we believe that the construction placed upon the statute by the trial court amounted to an unwarranted extension of its expressed meaning and intent.”

- Catalano v. Catalano, 148 Conn. 288, 291, 170 A.2d 726 (1961). “It is the generally accepted rule that a marriage valid where the ceremony is performed is valid everywhere There are, however, certain exceptions to that rule, including one which regards as invalid incestuous marriages between persons so closely related that their marriage is contrary to the strong public policy of the domicile though valid where celebrated.”
- Manning v. Manning, 16 Conn. Sup. 461, 462 (1950). “It is concluded that lack of parental consent does not render a marriage performed in this state either void or voidable.”

**WEST KEY
NUMBERS:**

- West Key Numbers: MARRIAGE
 - # 4 Persons who may marry
 - # 4.1. _____ In general
 - # 5 _____ age
 - # 6 _____ physical capacity
 - # 7 _____ mental capacity
 - # 8 _____ race or color
 - # 10 _____ Consanguinity or affinity

DIGEST TOPICS:

- ALR Digest: *Marriage* §§29-40.5. Capacity of parties; who may marry.
 - §29. Generally
 - §30. Consanguinity or affinity
 - §31. Physical incapacity
 - §32. Epileptics
 - §33. Infants
 - §34. Intoxicated person
 - §35. Insane person
 - §36. Person already married
 - §37. —Under belief that divorce has been obtained or that former spouse was dead
 - §38. Divorced person
 - §39. —Spouse guilty of adultery
 - §40. —Within prohibited time after divorce
 - §40.5. Time of attack on validity
- CONNECTICUT FAMILY LAW CITATIONS (2005): *Marriage*

ENCYCLOPEDIAS:

- 52 AM. JUR. 2D *Marriage* (2000).
 - §§ 16-18. Age
 - §§ 19-23. Mental capacity
 - §§ 24-25. Physical capacity
- 55 C.J.S. *Marriage* (1998).
 - §5. What law governs
 - §7. Same-sex marriage
 - §13. Capacity of parties in general
 - §14. Age
 - §15. Mental capacity
 - §16. Physical capacity

- §17. Consanguinity or affinity
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
- §§ 15-27. Proof of valid ceremonial marriage [see [Table 2](#)]
- Robin Cheryl Miller, Annotation, *Marriage Between Persons Of The Same Sex*, 81 ALR5th 1 (2000).

**TEXTS &
TREATISES**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 3. Marriage—Generally
 - § 3.4 Who may marry, in general
 - § 3.5 Persons under a disability
 - § 3.6 Minors
 - § 3.7 Consent of parent or guardian
 - § 3.8 Role of Probate Court
 - § 3.9 Persons afflicted with venereal disease
 - § 3.10 Persons barred by consanguinity or affinity
 - § 3.11 Previously married persons

LAW REVIEWS:

- Edward S. David, *The Law And Transsexualism: A Faltering Response To A Conceptual Dilemma*, 7 CONNECTICUT LAW REVIEW 288, 322-324 (1974-75).
- *Legality Of Homosexual Marriage*, 82 YALE LAW JOURNAL 573 (1972-73).

COMPILER:

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Section 1.2

The Marriage License

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to issuing and use of a marriage licenses in Connecticut

DEFINITION:

- “Such license, when certified by the registrar, is sufficient authority for any person authorized to perform a marriage ceremony in this state to join such persons in marriage, provided the ceremony is performed within the town where the license was issued and within a period of not more than sixty-five days after the date of application.” CONN. GEN. STAT. §46b-24(b) (2005).

SEE ALSO:

- [Table 1 Blood Tests](#)

STATUTES:

- CONN. GEN. STAT. (2005)
 - § 7-73(b). **Marriage license surcharge**
 - § 46b-24. **License required. Period of validity. Penalty.**
 - (a) No persons may be joined in marriage in this state until both have complied with the provisions of sections 46b-24, 46b-25 and 46b-29 to 46b-33, inclusive, and have been issued a license by the registrar for the town in which (1) the marriage is to be celebrated, or (2) either person to be joined in marriage resides, which license shall bear the certification of the registrar that the persons named therein have complied with the provisions of said sections.
 - § 46b-24a. **Validation of marriage occurring in town other than town where license issued**
 - § 46b-25. **Application for license**

LEGISLATIVE:

- 2003 CONN. ACTS 188 § 6 (Reg. Sess.). An act concerning premarital blood test requirements and marriage certificates. “(Effective October 1, 2003) Sections 19a-27, 46b-26 and 46b-27 of the general statutes are repealed.
- 2003 CONN. ACTS 238 § 2 (Reg. Sess.). An act concerning the validation of certain marriages.
- 2004 Conn. Acts 255 §§ 12, 26 (Reg. Sess.)]. Act concerning funeral directors and vital records.
- SUSAN PRICE, MARRIAGE LICENSE RECORDING UNDER P.A. 03-188, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 2004-R-0873 (December 13, 2004).
- SUSAN PRICE-LIVINGSTON, MARRIAGE LAWS IN CONNECTICUT AND MEXICO, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 2002-R-0627 (July 22, 2002).
- JOHN KASPRAK, BLOOD TESTS FOR MARRIAGE LICENSES, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 98-R-

1526 (December 18, 1998).

- MATTHEW RANELLI, MANDATORY PREMARITAL HIV TESTING, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 98-R-0995 (August 21, 1998).
- LAWRENCE K. FURBISH, REQUIRED COUNSELING FOR A MARRIAGE LICENSE AND DIVORCE ISSUES, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 96-R-0283 (March 15, 1996).

CASES

- Reddy v. Reddy, No. FA 03 0285473 (Conn. Super. Ct., J.D. New Haven at Meriden, May 17, 2005). “Although Connecticut does not recognize common-law marriages, some courts have recognized marriages entered into in Connecticut that have not complied with the necessary statutory requirements where the parties believed they were married and acted as such. *Carabetta v. Carabetta*, 182 Conn. 344, 350, 438 A.2d 109 (1980). In *Carabetta* the court addressed the issue of whether, under Connecticut law, despite solemnization according to an appropriate religious ceremony, a marriage is void where there has been noncompliance with the statutory requirement of a marriage license. The court noted that public policy is strongly opposed to regarding an attempted marriage, entered into in good faith, believed by one or both parties to be legal, and followed by cohabitation, to be void. *Id.*, 346-47 (citing *Hames v. Hames*, 163 Conn. 588, 599, 316 A.2d 379 (1972)). The court further explained that ‘[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe statutory requirement . . . such a marriage, though imperfect, is dissoluble rather than void.’ *Id.*, 349. The court concluded that ‘the legislature’s failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid.’ See also *Hames v. Hames*, *supra*, 163 Conn. 599 (interpreting statutes not to make void a marriage consummated after the issuance of a license but deficient for want of due solemnization.)”
- Kosek v. Osman, No. FA 02-04665181 (Conn. Super. Ct., J.D. New Haven, Feb. 25, 2005). “Under these circumstances, the court finds that the parties intended to marry and were in fact legally and validly married. Their marriage was properly and ceremonially solemnized in accord with the practices of their religion. Although they did not obtain a marriage license until six months later, that certificate stated the incorrect date, and the plaintiff did not file the license until five years later, lack of formal compliance with statutory requirements pertaining to marriage licenses does not void their marriage.”
- Hassan v. Hassan, No. FA01-0632261 (Conn. Super. Ct., Family Support Magistrate Division, Hartford J.D., Sep. 30, 2001) 2001 WL 1329840. “A marriage license may not be issued to any person under sixteen years of age without the endorsement of a probate judge. “(a) No license may be issued to any applicant under sixteen years of age, unless the judge of probate for the district in which the minor resides endorses his written consent on the license.” General Statutes § 46b-30. The testimony of both parties suggests that the plaintiff’s parents approved of the marriage. The defendant suggests that she was over sixteen at the time. If so, that would be sufficient. However, the plaintiff claims she was fifteen. Thus, endorsement of a probate judge would be required and there has been no evidence that such endorsement was sought or granted.”
- State v. Nosik, 245 Conn. 196, 202, 715 A.2d 673 (1998). “Thus, in *Carabetta*, we decided not to invalidate legally imperfect marriages if the parties had: (1) participated in a religious rite with the good faith intention of entering into a valid legal marriage; and (2) shared and manifested a good faith belief that they were, in fact, legally married. We conclude in part II of

this opinion that neither of these predicates has been established in this case.”

- Garrison v. Garrison, 190 Conn. 173, 175, 460 A.2d 945 (1983). “ He [the defendant] does not argue that the mere failure to file the marriage license makes the marriage void.”
- Carabetta v. Carabetta, 182 Conn. 344, 349, 438 A.2d 109 (1980). “ In sum, we conclude that the legislature's failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid.”
- Yonkers v. Yonkers, 6 Conn. Law Tribune No. 48, p. 14 (December 1, 1980). “The fact that the legislature omitted to declare marriages entered into by persons who had not obtained a license void is significant, because such a declaration is found in the case of marriages within the prohibited degree of kinship. This leads to a conclusion that the marriage entered into between the parties is dissoluble rather than void.”
- State Ex Rel. Felson v. Allen, 129 Conn. 427, 431, 29 A.2d 306 (1942). “A failure to comply with many of the requirements as to marriage provided in our statutes, where there is no express provision that such a failure will invalidate it, will not have that effect”
- Kowalczyk V. Kleszczynski, 152 Conn. 575, 577, 210 A.2d 444 (1965). “Marriage certificates are treated in this state as original documents, and need not therefore be authenticated as copies”

**WEST KEY
NUMBER:**

- West Key Number: *Marriage* # 25 Licenses and licensing officers
 - (1). Necessity for and effect of failure to procure license
 - (2). Requisites and validity of license
 - (3). Authority to issue license
 - (4). Duties of officers in general
 - (5). Liability of officers and bondsmen in general
 - (6). Actions against officers and bondsmen in general

DIGEST TOPICS:

- ALR Digest: *Marriage*
 - § 5. Liability of licensing officers
 - § 12.5. License
 - § 13. —Necessity of
 - § 14. —Fraud in procuring
- CONNECTICUT FAMILY LAW CITATIONS (2000): *Marriage*

**TEXTS &
TREATISES**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - Chapter 4. Marriage licenses and ceremonies.
 - § 4.1. Necessity
 - § 4.2. Venereal disease examination
 - § 4.3. Rubella Immunity test
 - § 4.4. Application
 - § 4.5. Copy of statute to applicants
 - § 4.6. Availability of completed applications
 - § 4.7. Waiting period; waiver
 - § 4.8. Issuance
 - § 4.9. Duration

**ENCYCLOPEDIAS
:**

- 52 AM. JUR. 2D *Marriage* (2000).
 - § 30. License
 - § 31. _____. Effect of noncompliance with licensing statute
- 55 C.J.S. *Marriage* (1998).

- § 27. Licenses
- § 28. _____. Issuance of license
- § 29. _____. Liability for wrongful issuance of license
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
- §§ 15-27. Proof of valid ceremonial marriage [see [Table 2](#)]
- Annotation, *Validity Of Solemnized Marriage As Affected By Absence Of License Required By Statute*, 61 ALR2d 847 (1958).

COMPILER:

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Table 2 Blood Tests

Table 2: Premarital Blood Tests REPEALED: Effective October 1, 2003	
<p>2003 CONN. ACTS 188 § 6 (Reg. Sess.). An act concerning premarital blood test requirements and marriage certificates <i>(Effective October 1, 2003)</i></p> <p>Sections 19a-27, 46b-26 and 46b-27 of the general statutes are REPEALED.</p>	
Statutes	<ul style="list-style-type: none"> • Test for venereal disease and rubella prerequisite. CONN. GEN. STAT. (2001) § 46b-26. • Waiver of tests by judge of probate. CONN. GEN. STAT. (2001) § 46b-27(a).
Legislative	<p>“Blood test for marriage license,” by John Kasprak. Connecticut General Assembly. Office of Legislative Research Report 98-R-1526 (December 18, 1998). http://www.cga.state.ct.us/ps98/rpt/olr/98-r-1526.doc</p>
Regulations	<p>“Premarital test for rubella,” CONN. AGENCIES REGS. §19a-36-A56 (2002), eff. October 25, 1989. [CONN. GEN. STAT. (2001) § 19a-27 was REPEALED effective October 1, 2003]</p>
Case	<p>“It is apparent that an essential provision of this statute was not complied with, that is to say when the statement of the physician was filed with the registrar it was not accompanied by a record of the standard laboratory blood test made. The only thing that accompanied the statement was a certificate by the Director of the Bureau of Laboratories of the State Department of Health that a standard laboratory blood test had in fact been made and reported to the physician who made the statement. This certificate is not at all the thing that the statute expressly requires. It is a record of the standard laboratory blood test made which must be filed with the statement. A certificate that a test has been made is one thing. The record required by the statute is quite another thing.” <u>Doe v. Doe</u>, 11 Conn. Sup. 157 (1942)</p>
Text	<p>7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999). § 4.2 Venereal disease examination § 4.3 Rubella immunity test</p>

Section 1.3

Who May Perform a Marriage

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to who may perform a marriage in Connecticut including liability of person officiating and the validity of marriages performed by unauthorized persons.
- DEFINITIONS:**
- “All marriages attempted to be celebrated by any other person are void.” CONN. GEN. STAT. § 46b-22(a) (2005).
- STATUTES:**
- CONN. GEN. STAT. (2005)
 - § 46b-22. Who may join persons in marriage
 - § 46b-22a. Validity of marriages performed by unauthorized justice of the peace
 - § 46b-23. Joining persons in marriage knowingly without authority
- LEGISLATIVE:**
- 2003 CONN. ACTS 238 § 1 (Reg. Sess.)). An act concerning the validation of certain marriages.
 - SUSAN PRICE-LIVINGSTON, HISTORY OF CIVIL MARRIAGE IN CONNECTICUT: SELECTED CHANGES, Connecticut General Assembly, Office of Legislative Research, OLR Backgrounder [2002-R-0850](#) (October 15, 2002).
 - SUSAN PRICE-LIVINGSTON, MARRIAGE LAWS IN CONNECTICUT AND MEXICO, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 2002-R-0627 (July 22, 2002).
- CASES**
- Ross v. Ross, No. FA97 0162587 S (Ct. Super. Ct., J.D. Stamford-Norwalk, Aug. 10, 1998). “There are two types of regulations concerning the validity of a marriage: 1) Substantive requirements determining those eligible to be married and 2) The ‘formalities prescribed by the state for the effectuation of a legally valid marriage.’” Carabetta v. Carabetta, 182 Conn. 344, 347 (1980). The formality requirements are of two sorts: 1) a marriage license and 2) solemnization. This case involves the issue of lack of solemnization.”
 - Carabetta v. Carabetta, 182 Conn. 344, 348, 438 A.2d 109 (1980). “Although solemnization is not at issue in the case before us, this language is illuminating since it demonstrates that the legislature has on occasion exercised its power to declare expressly that failure to observe some kinds of formalities, e.g., the celebration of a marriage by a person not authorized by this section to do so, renders a marriage void.”
 - State Ex Rel. Felson v. Allen, 129 Conn. 427, 432 (1942). “The situation [marriage performed by a person not authorized by statute] falls within the express terms of the statute, which declares such a marriage to be void.”
 - Town of Goshen v. Town of Stonington, 4 Conn. 209 (1822). *A clergyman, in the celebration of marriage, is a public civil officer.*
 - Kibbe v. Antram, 4 Conn. 134, 139 (1821). “ordained minister within the

	<ul style="list-style-type: none"> meaning of the statute.” <u>Roberts v. State Treasurer</u>, 2 Root 381 (1796).
<u>ATTORNEY GENERAL OPINIONS:</u>	<ul style="list-style-type: none"> “Minister emeritus.” 21 Op. Atty. Gen. 297, 298 (May 29, 1939). “We believe, further, that a minister emeritus has the same status as a minister who has retired, if he has not taken up another vocation or profession, and may still be considered as being in the work of the ministry.”
<u>WEST KEY NUMBER:</u>	<ul style="list-style-type: none"> <i>Marriage</i> <ul style="list-style-type: none"> # 27. Solemnization or celebration. Authority to perform ceremony. # 30. Liability of person officiating # 31. Certificate
<u>DIGEST TOPICS:</u>	<ul style="list-style-type: none"> ALR Digest: <i>Marriage</i> § 6. Liability of person officiating, CONNECTICUT FAMILY LAW CITATIONS (2002): <i>Marriage</i>
<u>TEXTS & TREATISES</u>	<ul style="list-style-type: none"> 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999). <ul style="list-style-type: none"> Chapter 4. Solemnization <ul style="list-style-type: none"> §4.10. Who may solemnize marriages? §4.12. Duties of persons officiating at marriage §4.13. Effect of lack of authority to solemnized marriage §4.14. Penalty for unauthorized performance §4.15. Effect of lack of solemnization
<u>ENCYCLOPEDIAS:</u>	<ul style="list-style-type: none"> 52 AM. JUR. 2D <i>Marriage</i> (2000). <ul style="list-style-type: none"> § 33. Performance of marriage ceremony by qualified person § 34. —Effect of violation of solemnizing statute 55 C.J.S. <i>Marriage</i> (1998). <ul style="list-style-type: none"> § 31. Solemnization. Persons who may solemnize. § 32. _____. Liabilities of persons solemnizing <ul style="list-style-type: none"> John D. Fletcher, <i>Validity Of Marriage</i>, 36 POF2d 441 (1983). §§ 15-27. Proof of valid ceremonial marriage [see Table 2] Annotation, <i>Validity Of Marriage As Affected By Lack Of Legal Authority Of Person Solemnizing It</i>, 13 ALR4th 1323 (1982).
<u>COMPILER:</u>	Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 3: Proof of Valid Ceremonial Marriage

36 POF2d 441 (1983)

John D. Fletcher

A. Testimony of Investigator	
§15	Authentication of marriage certificate
B. Testimony of Eyewitness to Marriage	
§16	Parties' cohabitation as married couple
§17	Identification of parties as participants in ceremony
§18	Performance of ceremony
§19	Capacity of parties at time of ceremony
C. Testimony of Custodian of Church Records	
§20	Church record of marriage
C. Testimony as to Statements of Family Members	
§21	Qualifications of witness
§22	Qualifications of declarant
§23	Statements by declarant about marriage
§24	Statements by party to marriage
D. Testimony as to Family Reputation and Family Documents	
§25	Relationship of witness to family
§26	Family reputation as to marriage
§27	Family record of marriage

Section 1.4

The Marriage Ceremony

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to marriage ceremonies in Connecticut

DEFINITIONS:

- “Our statutory scheme specifies no precise form for the celebration of marriage; nor does it explicitly require that the parties declare that they take one another as husband and wife No requirement is made concerning witnesses, but, like consent, the physical presence of the parties before an official is an implicit requirement to the performance of a marriage in this state.” Hames v. Hames, 163 Conn. 588, 596, 316 A.2d 379 (1972).
- “The law has not pointed out any mode in which marriages shall be celebrated, but has left it to the common custom and practice of the country. Any form of words which explicitly constitute a contract and engagement from the parties to each other, and published in the presence of, and by the officer appointed by the Statute, will be a valid marriage.” 1 Swift, Digest, p. 20.
- “Consent of the participants is a necessary condition to the creation of a valid marriage relationship, and there must be an intention of the parties to enter into the marriage status.” Bernstein v. Bernstein, 25 Conn. Sup. 239, 201 A.2d 660 (1964)

STATUTES:

- CONN. GEN. STAT. (2005)
§ 46b-24a. **Validation of marriage occurring in town other than town where license issued**

LEGISLATIVE:

- SUSAN PRICE-LIVINGSTON, MARRIAGE LAWS IN CONNECTICUT AND MEXICO, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 2002-R-0627 (July 22, 2002).

CASES

- Ross v. Ross, No. FA97 0162587 S (Ct. Super. Ct., J.D. Stamford-Norwalk, Aug. 10, 1998), 22 CONN. L. RPTR. 637,639 (November 2, 1998), 1998 WL 516159 (Conn. Super. 1998). “The Supreme Court reversed and held that the plaintiffs absence in 1960 from the ceremony in which the priest signed the marriage certificate prevented solemnization for the purpose of General Statutes § 46-3 (currently General Statutes § 46b-22). The noncompliance with that statute precluded the parties from acquiring valid marital status and rendered the 1960 marriage voidable.”
- State v. Nosik, 245 Conn. 196, 207, 715 A.2d 673 (1998). “In light of these facts, the trial court reasonably could have concluded that the defendant did not participate in the ceremony in New Jersey with the good faith belief that she was entering into a valid legal marriage. We conclude, therefore, that the trial court’s finding that the service at St. George’s was not a valid wedding

ceremony was not clearly erroneous.”

- Garrison v. Garrison, 190 Conn. 173, 175, 460 A.2d 945 (1983). “He [the defendant] does not argue that the mere failure to file the marriage license makes the marriage void.”
- Hames v. Hames, 163 Conn. 588, 596, 316 A.2d 379 (1972). “. . . the purported marriage, deficient for want of due solemnization, was voidable rather than void, insofar as the latter term may imply an absolute nullity.”
- Perlstein v. Perlstein, 152 Conn. 152, 157, 204 A.2d 909 (1964). “A marriage ceremony, especially if apparently legally performed, gives rise to a presumptively valid status of marriage which persists unless and until it is overthrown by evidence in an appropriate judicial proceeding. No mere claim of bigamy, whether made in a pleading or elsewhere, would establish that a marriage was bigamous.”
- State Ex Rel. Felson v. Allen, 129 Conn. 427, 431-432, 29 A.2d 306 (1942). “The plaintiffs appeared in Greenwich before a person whom they believed to be a justice of the peace; he purported to join them in marriage, but they are unable to prove that he was authorized by the statute to do so, and they do not claim that there is any basis upon which we can hold that he was. The situation falls within the express terms of the statute, which declares such a marriage to be void.”

**ATTORNEY
GENERAL
OPINIONS:**

- “Marriage by proxy,” 23 Op.Atty.Gen. 147 (July 1, 1943). “It is my opinion that Connecticut does not permit marriages by proxy, nor does it recognize such marriages when entered into elsewhere.”

**WEST KEY
NUMBER:**

- *Marriage*
 - # 23. Ceremonial marriage in general
 - # 26. Solemnization or celebration
 - # 32. Return and recording or registration

DIGEST TOPICS:

- ALR Digest: *Marriage* § 15. Solemnization or celebration
- CONNECTICUT FAMILY LAW CITATIONS (2002): *Marriage*

**TEXTS &
TREATISES**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - § 2.3 Marriage by proxy
 - § 4.11. Formalities of ceremonies
 - § 4.16. Return and recordation
 - § 4.17. Proof of marriage

**ENCYCLOPEDIAS
:**

- 52 AM. JUR. 2D *Marriage* (2000).
 - § 13. Ceremonial marriage. Generally
 - § 14. Necessity of consummation or cohabitation
 - § 15. Proxy marriage
- 55 C.J.S. *Marriage* (1998).
 - § 30. Solemnization
 - § 33. Place of solemnization
 - § 34. Form of ceremony
 - § 35. Certificate and return or record
 - § 36. Mistake
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
 - §§ 15-27. Proof of valid ceremonial marriage [see [Table 2](#)]
- Annotation, *Validity Of Solemnized Marriage As Affected By Absence Of License Required By Statute*, 61 ALR2d 847 (1958).

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown,
One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 1.5

Foreign and Out-Of-State Marriages in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the validity of foreign marriages in Connecticut

DEFINITION:

- **COMITY:** “The principle of comity provides the basis upon which state courts give validity to divorce judgments of foreign countries. Comity permits recognition of judgments of foreign countries pursuant to international duty and convenience, with due regard for the rights of American citizens.” Baker v. Baker, 39 Conn. Sup. 66, 68, 468 A.2d 944 (1983).
- “A state has the authority to declare what marriages of its citizens shall be recognized as valid, regardless of the fact that the marriages may have been entered into in foreign jurisdictions where they were valid.” Catalano v. Catalano, 148 Conn. 288, 291, 170 A.2d 726 (1961).
- “Neither case law nor § 42b-28 suggests that courts are under any obligation to recognize a marriage which is not valid in the country in which it was obtained or which was not celebrated in the presence of the U.S. ambassador or minister to that country or a U.S. consular officer accredited to such country at a place within his consular jurisdiction.” Reddy v. Reddy, No. FA 03 0285473 (Conn. Super. Ct., J.D. New Haven at Meriden, May 17, 2005).

STATUTES:

- CONN. GEN. STAT. (2005)
§ 46b-28. **When marriages in foreign country are valid.** All marriages in which one or both parties are citizens of this state, celebrated in a foreign country, shall be valid, provided: (1) Each party would have legal capacity to contract such marriage in this state and the marriage is celebrated in conformity with the law of that country; or (2) the marriage is celebrated, in the presence of the ambassador or minister to that country from the United States or in the presence of a consular officer of the United States accredited to such country, at a place within his consular jurisdiction, by any ordained or licensed clergyman engaged in the work of the ministry in any state of the United States or in any foreign country.

LEGISLATIVE:

- SUSAN PRICE-LIVINGSTON, MARRIAGE LAWS IN CONNECTICUT AND MEXICO, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 2002-R-0627 (July 22, 2002).

CASES

- Baker v. Baker, 39 Conn.Sup. 66, 71, 468 A.2d 944 (1983) “For although the

majority of states refuse to recognize the validity of a foreign divorce decree when their own jurisdictional requirements with respect to domicile are absent, most courts, when equities mandate, will give practical recognition to the foreign decree. Consequently, the party attacking the foreign decree may be effectively barred from securing judgment of its invalidity. Thus, in *Chilcott v. Chilcott*, 257 Cal.App.2d 868, 65 Cal.Rptr. 263 (1968), the court held that even if a wife's Mexican divorce were invalid, her husband would be estopped to deny its validity where both parties had remarried in the belief that they were divorced."

- *Litvaitis v. Litvaitis*, 162 Conn. 540, 546, 295 A.2d 519 (1972). "In the case at bar, the court found that the defendant went to Mexico solely for the purpose of securing a divorce and that he intended to return to Connecticut. The plaintiff never submitted herself to the jurisdiction of the Mexican court. 'To constitute domicile, the residence at the place chosen for the domicile must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicile of the person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with the present intention of making it his home.' *Rice v. Rice*, supra, [134 Conn. 440,] 445-46; *Mills v. Mills*, 119 Conn. 612, 617, 179 A. 5. It is quite obvious that the defendant, who was the only party to appear before the foreign court, was not a domiciliary of the Mexican state. The court properly refused to recognize the Mexican divorce as terminating the marriage."
- *Catalano v. Catalano*, 148 Conn. 288, 291, 170 A.2d 726 (1961). "It is the generally accepted rule that a marriage valid where the ceremony is performed is valid everywhere There are, however, certain exceptions to that rule, including one which regards as invalid incestuous marriages between persons so closely related that their marriage is contrary to the strong public policy of the domicile though valid where celebrated. Restatement, Conflict of Laws 132 (b). That exception may be expressed in the terms of a statute or by necessary implication."
- *Fantasia v. Fantasia*, 8 Conn. Supp. 25 (1940). ". . . it is universally recognized that a marriage, valid in the jurisdiction in which it is performed, is valid everywhere unless, of course, it violates some rule of public policy, and for that reason it is concluded that the marriage involved in the present case, being valid in New York is likewise valid in Connecticut."

**WEST KEY
NUMBER:**

- *Marriage* # 17. Laws of foreign countries

ENCYCLOPEDIAS:

- 52 AM. JUR. 2D *Marriage* (2000).
§§ 62-76. Effect of conflicting foreign law
- 55 C.J.S. *Marriage* (1998).
§ 5. What law governs
§ 6. Lex loci contractus as controlling
 - John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
§§ 15-27. Proof of valid ceremonial marriage [see [Table 2](#)]
- John C. Williams, Annotation, *Recognition By Forum State Of Marriage Which, Although Invalid Where Contracted, Would Have Been Valid If Contracted Within Forum State*, 82 ALR3d 1240 (1978).

**TEXTS &
TREATISES**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 6 Foreign Marriage
§ 6.1. Law governing capacity and status
§ 6.2. Effect of validity under foreign law

- § 6.3. Proof of foreign law
- § 6.4. Non age or want of parental consent
- § 6.5. Marriage against consanguinity prohibition

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown,
One Court Street, Middletown, CT 06457. (860) 343-6560.

Common Law Marriage

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the validity of common law marriages in Connecticut including recognition by Connecticut of out of state common law marriages.
- STATUTES:**
- CONN. GEN. STAT. (2005)
§ 46b-22. **Who may join persons in marriage . . .** “All marriages attempted to be celebrated by any other person are void.”
- LEGISLATIVE:**
- GEORGE COPPOLO, COMMON LAW MARRIAGE AND THE LEGAL RIGHTS OF COMMON LAW PARTNERS, Connecticut General Assembly, Office of Legislative Research, OLR Report no. 99-R-0698 (June 15, 1999).
- CASES**
- Biercevicz v. Liberty Mutual Insurance Company, 49 Conn. Sup. 175, 865 A.2d 1267 (2004). “Indeed, as in New Jersey, Connecticut does not recognize common-law marriage. Engaged couples are not recognized for the purposes of workers' compensation, social security benefits, welfare, or inheritance by intestate succession. It is also noted that Connecticut would not allow an unmarried person to sue for loss of consortium, whether or not that person cohabited with the injured party.”
 - Hames v. Hames, 163 Conn. 588, 596-597, 316 A.2d 379 (1972). “Under 46-3, ‘all marriages attempted to be celebrated’ by an unauthorized person ‘shall be void.’ This prohibiting clause of 46-3 was construed in *State ex rel. Felson v. Allen*, [129 Conn. 427]supra, 432, to carry ‘the necessary implication that no valid marriage is created where there is no celebration at all but merely an exchange of promises, or cohabitation under such circumstances as would constitute a common law marriage.’ In the *Felson* case, the court construed 46-3 to invalidate marriages in which the only celebrants were the would-be spouses themselves — that is, where neither met the statutory criteria to act as the state's agent in performing the marriage. Implicit in this decision, however, is the proposition that a third party must witness or officiate at a ceremony wherein the parties each presently consent to marriage.”
 - State Ex Rel. Felson v. Allen, 129 Conn. 427, 431, 29 A.2d 306 (1942). “While the statute in terms makes void only a marriage celebrated by an unauthorized person, the provision carries the necessary implication that no valid marriage is created when there is no celebration at all but merely an exchange of promises, or cohabitation under such circumstances as would constitute a common-law marriage . . . **Our law does not recognize common-law marriages.**” [emphasis added]
 - Garrity v. Gingras, 12 Conn. L. Rptr. 305 at 305 (September 26, 1994). “Connecticut courts do recognize the existence of common law marriages in other states and ‘it is a generally accepted rule that a marriage that is valid in the state where contracted is valid everywhere.’ Collier v. Milford, 206 Conn. 242,248 (1988).”

- Boland v. Catalano, 202 Conn. 333, 339, 521 A.2d 142 (1987). “We agree with the trial referee that cohabitation alone does not create any contractual relationship or, unlike marriage, impose other legal duties upon the parties. In this jurisdiction, common law marriages are not accorded validity The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not they engage in sexual activity.”
- McAnerney v. McAnerney, 165 Conn. 277, 285, 334 A.2d 437 (1973). “Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status. Thus, for the purposes of the laws of this jurisdiction and for the purposes of the contract, Mrs. McAnerney’s cohabitation with another has no effect on the contractual provision whereby the plaintiff’s obligation terminates with the wife’s remarriage.”
- Hames v. Hames, 163 Conn. 588, 596, 316 A.2d 379 (1972). “Marital status, of course, arises not from the simple declarations of persons nor from the undisputed claims of litigants It is rather created and dissolved only according to law.”
- Collier v. City of Milford, 206 Conn. 242, 249, 537 A.2d 474 (1988). “This court has never had the occasion to rule directly on the question of the validity in this state of a common law marriage validly contracted in accordance with the law of another state. The Superior Court in Delaney v. Delaney, 35 Conn. Sup. 230, 405 A.2d 91 (1979), however, held that the validity of a marriage is governed by lex loci contractus and recognized the validity of a common law marriage contracted in Rhode Island Further, it is the generally accepted rule that a marriage that is valid in the state where contracted is valid everywhere unless for some reason the marriage is contrary to the strong public policy of the state required to rule on its validity.”

FORMS:

- 12A AM JUR LEGAL FORMS *Marriage* (1999).
§ 171:20. Affirmation of Common Law Marriage
- 5 NICOLS CYCLOPEDIA OF LEGAL FORMS *Husband and Wife* (1991).
§ 5.685. Affirmation of Common Law Marriage
- 16B AM JUR LEGAL FORMS, *Social Security* (1995).
§ 235:62. Statement—facts showing valid common-law marriage
§ 235:64. Certificate—of attorney—recognition of common-law marriage in particular jurisdiction

WEST KEY NUMBERS:

- *Marriage* # 13. Essentials in general. Common-law requisites
- *Marriage* # 22. Marriage by cohabitation and reputation

DIGEST TOPICS:

- ALR Digest: Marriage §§24-27
- CONNECTICUT FAMILY LAW CITATIONS (2002): *Marriage*

TEXTS & TREATISES

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 5. Common Law Marriages
§ 5.1. In general
§ 5.2. Validity of common law marriages contracted in the state.
§ 5.3. Validity of common law marriages contracted outside the state.
§ 5.4. Cohabitation after invalid marriage

ENCYCLOPEDIAS

:

- 52 AM. JUR. 2D *Marriage* (2000).
§§ 36-46. Common-law marriage
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
§§ 28-41. Proof of valid common-law marriage
- 55 C.J.S. *Marriage* (1998).
§ 10. Common law marriages in general.
§ 20. Consent of the parties in general. Requisite and sufficiency
b. Common-law marriage
§ 22. Mutual agreement. Common law marriage
§ 25. Consummation and assumption of marital rights and duties.
Common-law marriages

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch
Law Library at Middletown, One Court Street, Middletown, CT 06457. (860)
343-6560.

Civil Unions in Connecticut

A Guide to Resources in the Law Library

- “‘**Civil union**’ means a union established pursuant to [sections 1 to 15](#), inclusive, of this act between two eligible persons” 2005 CONN. ACTS 10 § 1(1) (Reg. Sess.) (emphasis added).
- “‘**Party to a civil union**’ means a person who has established a civil union pursuant to sections 1 to 15, inclusive, of this act.” 2005 Conn. Acts 10 §1(2) (Reg. Sess.) (emphasis added).
- **Incorporation by reference:** “Wherever in the general statutes the terms ‘**spouse**’, ‘**family**’, ‘immediate family’, ‘dependent’, ‘next of kin’ or any other term that denotes the **spousal relationship** are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 [*Preparation of certificates*] and 17b-137a [*Social Security number to be recorded on license applications, certain documents and death certificate. Confidentiality.*] of the general statutes, as amended by this act, subdivision (4) of section 45a-727a [*State policy re best interest of the child; public policy re marriage.*], sections 46b-20 to 46b-34[*Marriage*], inclusive, section 46b-150d[*Emancipation under common law*] of the general statutes, as amended by this act, and section 14 of this act, the term ‘**marriage**’ is used or defined, a civil union shall be included in such use or definition. 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005). (emphasis added).
- “Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.” 2005 CONN. ACTS 10 § 14 (EFFECTIVE OCTOBER 1, 2005).
- “A marriage [civil union] is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction.” Conn. Gen. Stats. § 46b-40(a) (2005). “*Civil Unions*” incorporation by reference.

Section 2.1

Who May Enter Into a Civil Union in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to persons who may establish a civil union in Connecticut (*Effective October 1, 2005*).

DEFINITIONS:

- **ELIGIBLE:** “A person is eligible to enter into a civil union if such person is:
 - (1) Not a party to another civil union or a marriage;
 - (2) Of the same sex as the other party to the civil union;
 - (3) Except as provided in section 10 of this act, at least eighteen years of age; and
 - (4) Not prohibited from entering into a civil union pursuant to section 3 of this act.” 2005 CONN. ACTS 10 § 2(Reg. Sess.) *Effective October 1, 2005*.
- **WHO SHALL NOT ENTER INTO A CIVIL UNION:**
 - “(a) A woman shall not enter into a civil union with her mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister or mother's sister.
 - (b) A man shall not enter into a civil union with his father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother or mother's brother.
 - (c) A civil union between persons prohibited from entering into a civil union pursuant to subsection (a) or (b) of this section is void.” 2005 CONN. ACTS 10 § 3(Reg. Sess.) (*Effective October 1, 2005*).
- **APPLICANT UNDER THE SUPERVISION OR CONTROL OF A CONSERVATOR:** “(a) No civil union license may be issued to any applicant under the supervision or control of a conservator, appointed in accordance with sections 45a-644 to 45a-662, inclusive, of the general statutes unless the written consent of the conservator, signed and acknowledged before a person authorized to take acknowledgments of conveyances under the provisions of section 47-5a of the general statutes or authorized to take acknowledgments in any other state or country, is filed with the registrar of vital statistics.
 - (b) Any person who enters into a civil union without the consent provided for in subsection (a) of this section shall acquire no rights by such civil union in the property of any person who was under such control or supervision at the time the civil union was entered into.” [2005 CONN. ACTS 10 § 9](#) (Reg. Sess.) (*Effective October 1, 2005*).
- **AGE:** “No civil union license may be issued to any applicant under eighteen years of age.” 2005 CONN. ACTS 10 § 10 (Reg. Sess.)(*Effective October 1, 2005*).
- **EMANCIPATED MINOR:** “(i) the minor shall be deemed to be over eighteen years of age for purposes of securing an operator's license under

section 14-36 and a marriage license under subsection (b) of section 46b-30 or a civil union license section 10 of this act without parental consent”
CONN. GEN. STATS. § 46b-150d(i) (2005). (Effective October 1, 2005).

STATUTES:

- 2005 CONN. ACTS 10 (Reg. Sess.)
§ 2 (NEW) (*Effective October 1, 2005*).
§ 3 (NEW) (*Effective October 1, 2005*).

LEGISLATIVE:

- SUSAN PRICE, QUESTIONS ABOUT CIVIL UNIONS LEGISLATION, Connecticut General Assembly, Office of Legislative Research, OLR Research Report, 2005-R-0354 (April 5, 2005).
- SUSAN PRICE, CIVIL UNIONS AND GAY MARRIAGE, Connecticut General Assembly, Office of Legislative Research, OLR Research Report, 2005-R-0410 (April 22, 2005).
- [OFFICE OF LEGISLATIVE RESEARCH, OLR BILL ANALYSIS, SSB 963 \(AS AMENDED BY HOUSE "A" AND "B"\), AN ACT CONCERNING CIVIL UNIONS \(FILE COPY 379\).](#)

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 2.2

License for a Civil Union in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to issuing and use of a license for a civil union in Connecticut (*effective October 1, 2005*)

DEFINITION:

- **REQUIREMENTS:** “No persons may be joined in a civil union in this state until both have complied with the provisions of [sections 8 to 10](#), inclusive, of this act and have been issued a license by the registrar of vital statistics for the town in which (1) the civil union is to be celebrated, or (2) either person to be joined in the civil union resides, which license shall bear the certification of the registrar that the persons named therein have complied with the provisions of [sections 8 to 10](#), inclusive, of this act.” 2005 CONN. ACTS 10 § 7(a)(Reg. Sess.)(*Effective October 1, 2005*).
- **FORMALITIES:** “No license for a civil union may be issued by the registrar of vital statistics until both persons have appeared before the registrar and made application for a license. The license shall be completed in its entirety, dated, signed and sworn to by each applicant and shall state each applicant's name, age, race, birthplace, residence, whether single, widowed or divorced and whether under the supervision or control of a conservator or guardian. The Social Security numbers of the two persons shall be recorded in the ‘administrative purposes’ section of the license. If the license is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of application. The registrar shall issue a copy of [sections 1 to 15](#), inclusive, of this act to any person making application for a license.” 2005 CONN. ACTS 10 § 8 (Reg. Sess.)(*Effective October 1, 2005*).
- **TIME LIMIT OF APPLICATION:** “Such license, when certified by the registrar, is sufficient authority for any person authorized to perform a civil union ceremony in this state to join such persons in a civil union, provided the ceremony is performed not more than sixty-five days after the date of application.” 2005 CONN. ACTS 10 § 7(b)(Reg. Sess.)(*Effective October 1, 2005*).
- **PENALTY:** “Any person who joins any persons in a civil union without having received such license from them shall be fined not more than one hundred dollars.” 2005 CONN. ACTS 10 § 7(c) (Reg. Sess.)(*Effective October 1, 2005*). *See also:* Conn. Gen. Stats. § 51-164n(b) as amended by 2005 CONN. ACTS 10 § 21 (Reg. Sess.)(*Effective October 1, 2005*).

STATUTES:

- CONN. GEN. STATS. (2005)
 - § 7-45. Preparation of certificates [amended by 2005 CONN. ACTS 10 § 16 (Reg. Sess.)(*Effective October 1, 2005*)].

§ 17b-137a. Social Security number to be recorded on license applications, certain documents and death certificates. Confidentiality.[amended by 2005 CONN. ACTS 10 § 17 (Reg. Sess.)(*Effective October 1, 2005*)].

- 2005 CONN. ACTS 10 (Reg. Sess.)
§ 7 (NEW) (*Effective October 1, 2005*).
[§ 8 \(NEW\) \(*Effective October 1, 2005*\)](#).
[§ 9 \(NEW\) \(*Effective October 1, 2005*\)](#).
[§ 10 \(NEW\) \(*Effective October 1, 2005*\)](#).
§ 16 (NEW) (*Effective October 1, 2005*).

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown,
One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 4 Sections 8-10

<p style="text-align: center;">Sections 8-10</p> <p style="text-align: center;">2005 CONN. ACTS 10 §§ 8-10 (Reg. Sess.) <i>(Effective October 1, 2005)</i></p>	
§ 8	<p>“No license for a civil union may be issued by the registrar of vital statistics until both persons have appeared before the registrar and made application for a license. The license shall be completed in its entirety, dated, signed and sworn to by each applicant and shall state each applicant's name, age, race, birthplace, residence, whether single, widowed or divorced and whether under the supervision or control of a conservator or guardian. The Social Security numbers of the two persons shall be recorded in the ‘administrative purposes’ section of the license. If the license is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of application. The registrar shall issue a copy of sections 1 to 15, inclusive, of this act to any person making application for a license.”</p>
§ 9	<p>(a) No civil union license may be issued to any applicant under the supervision or control of a conservator, appointed in accordance with sections 45a-644 to 45a-662, inclusive, of the general statutes unless the written consent of the conservator, signed and acknowledged before a person authorized to take acknowledgments of conveyances under the provisions of section 47-5a of the general statutes or authorized to take acknowledgments in any other state or country, is filed with the registrar of vital statistics.</p> <p>(b) Any person who enters into a civil union without the consent provided for in subsection (a) of this section shall acquire no rights by such civil union in the property of any person who was under such control or supervision at the time the civil union was entered into.</p>
§ 10	<p>No civil union license may be issued to any applicant under eighteen years of age.</p>

Section 2.3

Who May Join Persons in a Civil Union

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to who may join persons in a civil union.

DEFINITIONS:

- **WHO MAY JOIN PERSONS IN A CIVIL UNION:** “All judges and retired judges, either elected or appointed, including federal judges and judges of other states who may legally join persons in marriage or a civil union, family support magistrates, state referees and justices of the peace may join persons in a civil union in any town in the state, and all ordained or licensed members of the clergy, belonging to this state or any other state, as long as they continue in the work of the ministry may join persons in a civil union. All civil unions solemnized according to the forms and usages of any religious denomination in this state are valid. All civil unions attempted to be celebrated by any other person are void.” 2005 CONN. ACTS 10 §4(a) (Reg. Sess.) (Effective October 1, 2005).
- **WHO MAY NOT:** “No public official legally authorized to issue civil union licenses may join persons in a civil union under authority of a license issued by such official, or such official's assistant or deputy; nor may any such assistant or deputy join persons in a civil union under authority of a license issued by such public official.” 2005 CONN. ACTS 10 §4(b) (Reg. Sess.) (Effective October 1, 2005).
- “Any person violating any provision of this section [§ 4] shall be fined not more than fifty dollars.” CONN. ACTS 10 §4(c) (Reg. Sess.) (Effective October 1, 2005).
- “Any person who undertakes to join persons in a civil union, knowing that such person is not authorized to do so, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.” CONN. ACTS 10 §5 (Reg. Sess.) (Effective October 1, 2005).
- “Any person authorized to join persons in a civil union pursuant to section 4 of this act, who fails or refuses for any reason to join persons in a civil union shall not be subject to any fine or other penalty for such failure or refusal.” CONN. ACTS 10 §6 (Reg. Sess.) (Effective October 1, 2005).

STATUTES:

- CONN. ACTS 10 § 4 (Reg. Sess.) (Effective October 1, 2005).

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 2.4

The Civil Union Ceremony

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to civil union ceremonies in Connecticut

STATUTES:

- CONN. ACTS 10 (Reg. Sess.) (Effective October 1, 2005).

§ 7 (NEW)

- (a). No persons may be joined in a civil union in this state until both have complied with the provisions of sections 8 to 10, inclusive, of this act and have been issued a license by the registrar of vital statistics for the town in which (1) the civil union is to be celebrated, or (2) either person to be joined in the civil union resides, which license shall bear the certification of the registrar that the persons named therein have complied with the provisions of sections 8 to 10, inclusive, of this act.
- (b) Such license, when certified by the registrar, is sufficient authority for any person authorized to perform a civil union ceremony in this state to join such persons in a civil union, provided the ceremony is performed not more than sixty-five days after the date of application.
- (c) Any person who joins any persons in a civil union without having received such license from them shall be fined not more than one hundred dollars.

§ 11 (NEW) (Effective October 1, 2005)

- (a) Each person who joins any person in a civil union shall certify upon the license certificate the fact, time and place of the civil union, and return it to the registrar of vital statistics of the town where it was issued, before or during the first week of the month following the celebration of the civil union. Any person who fails to do so shall be fined not more than ten dollars.
- (b) If any person fails to return the certificate to the registrar of vital statistics, as required under subsection (a) of this section, the persons joined in a civil union may provide the registrar with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the civil union. Upon the recording of such affidavit by the registrar of vital statistics, the civil union of the affiants shall be deemed to be valid as of the date of the civil union stated in the affidavit.

§ 12. (NEW) (Effective October 1, 2005)

The certificate required by section 11 of this act or an affidavit recorded pursuant to subsection (b) of said section shall be prima facie evidence of the facts stated in them.

§ 14. (NEW)

“Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general

statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.”

Section 2.5

Civil Unions Celebrated in a Foreign Country

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the validity of civil unions celebrated in a foreign country.

STATUTES:

- CONN. ACTS 10 (Reg. Sess.) (Effective October 1, 2005).
§ 13 (NEW)
“All civil unions in which one or both parties are citizens of this state, celebrated in a foreign country, shall be valid, provided: (1) Each party would have legal capacity to contract such civil union in this state and the civil union is celebrated in conformity with the law of that country; or (2) the civil union is celebrated in the presence of the ambassador or minister to that country from the United States or in the presence of a consular officer of the United States accredited to such country, at a place within his or her consular jurisdiction, by any ordained or licensed member of the clergy engaged in the work of the ministry in any state of the United States or in any foreign country.”

LEGISLATIVE:

- SUSAN PRICE, QUESTIONS ABOUT CIVIL UNIONS LEGISLATION, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, OLR RESEARCH REPORT, 2005-R-0354 (APRIL 5, 2005).
 1. How does the bill compare with Vermont’s civil union law

Table 5 Miscellaneous Provisions

Miscellaneous Changes to CONN. GEN. STATS.	
Probate Courts and Procedure	
Entry fees. Basic costs other than for decedent's estates and fiduciary accountings	"For proceedings brought under section 46b-30 <u>or section 10 of this act</u> , the cost shall be twenty-five dollars." CONN. GEN. STATS. § 45a-106(7) [amended by 2005 CONN. ACTS 10 § 18 (Reg. Sess.)(<i>Effective October 1, 2005</i>)].
Appointment of plenary guardian or limited guardian by court. Written acceptance of guardianship. Probate bond. Findings of the court. Appointment of employee of Mental Retardation as plenary guardian or limited guardian.	"For purposes of sections 45a-669 to [45a-784] <u>45a-684</u> , inclusive, and section 46b-29 <u>and section 9 of this act</u> , any alleged inability of the respondent must be evidenced by recent behavior which would cause harm or create a risk of harm, by clear and convincing proof." CONN. GEN. STATS. § 45a-676(c) [amended by 2005 CONN. ACTS 10 § 19 (Reg. Sess.)(<i>Effective October 1, 2005</i>)].
Juvenile Matters	
Effect of emancipation	" . . . (i) the minor the minor shall be deemed to be over eighteen years of age for purposes of securing an operator's license under section 14-36 and a marriage license under subsection (b) of section 46b-30 <u>or a civil union license section 10 of this act</u> without parental consent" CONN. GEN. STATS. § 46b-150d [amended by 2005 CONN. ACTS 10 § 20 (Reg. Sess.)(<i>Effective October 1, 2005</i>)]
Courts	
Infractions of the law. Procedure upon summons for infractions or certain violations. Payment by mail. Procedure at trial.	"Notwithstanding any provision of the general statutes, any person who is alleged to have committed . . . <u>section 4, 7, 11 of this act</u> . . . shall follow the procedures set forth in this section." CONN. GEN. STATS. § 51-164n(b) [amended by 2005 CONN. ACTS 10 § 21 (Reg. Sess.)(<i>Effective October 1, 2005</i>)]

Figure 1 Sections 1-15 Civil Unions

2005 Conn. Acts 10 §§ 1-15

Section 1. (NEW) (Effective October 1, 2005) For the purposes of sections 1 to 15, inclusive, of this act:

- (1) "Civil union" means a union established pursuant to sections 1 to 15, inclusive, of this act between two eligible persons; and
- (2) "Party to a civil union" means a person who has established a civil union pursuant to sections 1 to 15, inclusive, of this act.

Section 2. (NEW) (Effective October 1, 2005)

A person is eligible to enter into a civil union if such person is:

- (1) Not a party to another civil union or a marriage;
- (2) Of the same sex as the other party to the civil union;
- (3) Except as provided in section 10 of this act, at least eighteen years of age; and
- (4) Not prohibited from entering into a civil union pursuant to section 3 of this act.

Section 3. (NEW) (Effective October 1, 2005)

- (a) A woman shall not enter into a civil union with her mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister or mother's sister.
- (b) A man shall not enter into a civil union with his father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother or mother's brother.
- (c) A civil union between persons prohibited from entering into a civil union pursuant to subsection (a) or (b) of this section is void.

Section 4. (NEW) (Effective October 1, 2005)

- (a) All judges and retired judges, either elected or appointed, including federal judges and judges of other states who may legally join persons in marriage or a civil union, family support magistrates, state referees and justices of the peace may join persons in a civil union in any town in the state, and all ordained or licensed members of the clergy, belonging to this state or any other state, as long as they continue in the work of the ministry may join persons in a civil union. All civil unions solemnized according to the forms and usages of any religious denomination in this state are valid. All civil unions attempted to be celebrated by any other person are void.
- (b) No public official legally authorized to issue civil union licenses may join persons in a civil union under authority of a license issued by such official, or such official's assistant or deputy; nor may any such assistant or deputy join persons in a civil union under authority of a license issued by such public official.
- (c) Any person violating any provision of this section shall be fined not more than fifty dollars.

Section 5. (NEW) (Effective October 1, 2005)

Any person who undertakes to join persons in a civil union, knowing that such person is not authorized to do so, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

Section 6. (NEW) (Effective October 1, 2005)

Any person authorized to join persons in a civil union pursuant to section 4 of this act, who fails or refuses for any reason to join persons in a civil union shall not be subject to any fine or other penalty for such failure or refusal.

Section 7. (NEW) (Effective October 1, 2005)

- (a) No persons may be joined in a civil union in this state until both have complied with the provisions of sections 8 to 10, inclusive, of this act and have been issued a license by the registrar of vital statistics for the town in which (1) the civil union is to be celebrated, or (2) either person to be joined in the civil union resides, which license shall bear the certification of the registrar that the persons named therein have complied with the provisions of sections 8 to 10, inclusive, of this act.

- (b) Such license, when certified by the registrar, is sufficient authority for any person authorized to perform a civil union ceremony in this state to join such persons in a civil union, provided the ceremony is performed not more than sixty-five days after the date of application.
- (c) Any person who joins any persons in a civil union without having received such license from them shall be fined not more than one hundred dollars.

Section 8. (NEW) (Effective October 1, 2005)

No license for a civil union may be issued by the registrar of vital statistics until both persons have appeared before the registrar and made application for a license. The license shall be completed in its entirety, dated, signed and sworn to by each applicant and shall state each applicant's name, age, race, birthplace, residence, whether single, widowed or divorced and whether under the supervision or control of a conservator or guardian. The Social Security numbers of the two persons shall be recorded in the "administrative purposes" section of the license. If the license is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of application. The registrar shall issue a copy of sections 1 to 15, inclusive, of this act to any person making application for a license.

Section 9. (NEW) (Effective October 1, 2005)

- (a) No civil union license may be issued to any applicant under the supervision or control of a conservator, appointed in accordance with sections 45a-644 to 45a-662, inclusive, of the general statutes unless the written consent of the conservator, signed and acknowledged before a person authorized to take acknowledgments of conveyances under the provisions of section 47-5a of the general statutes or authorized to take acknowledgments in any other state or country, is filed with the registrar of vital statistics.
- (b) Any person who enters into a civil union without the consent provided for in subsection (a) of this section shall acquire no rights by such civil union in the property of any person who was under such control or supervision at the time the civil union was entered into.

Section 10. (NEW) (Effective October 1, 2005)

No civil union license may be issued to any applicant under eighteen years of age.

Section 11. (NEW) (Effective October 1, 2005)

- (a) Each person who joins any person in a civil union shall certify upon the license certificate the fact, time and place of the civil union, and return it to the registrar of vital statistics of the town where it was issued, before or during the first week of the month following the celebration of the civil union. Any person who fails to do so shall be fined not more than ten dollars.
- (b) If any person fails to return the certificate to the registrar of vital statistics, as required under subsection (a) of this section, the persons joined in a civil union may provide the registrar with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the civil union. Upon the recording of such affidavit by the registrar of vital statistics, the civil union of the affiants shall be deemed to be valid as of the date of the civil union stated in the affidavit.

Section 12. (NEW) (Effective October 1, 2005)

The certificate required by section 11 of this act or an affidavit recorded pursuant to subsection (b) of said section shall be prima facie evidence of the facts stated in them.

Section 13. (NEW) (Effective October 1, 2005)

All civil unions in which one or both parties are citizens of this state, celebrated in a foreign country, shall be valid, provided: (1) Each party would have legal capacity to contract such civil union in this state and the civil union is celebrated in conformity with the law of that country; or (2) the civil union is celebrated in the presence of the ambassador or minister to that country from the United States or in the presence of a consular officer of the United States accredited to such country, at a place within his or her consular jurisdiction, by any ordained or licensed member of the clergy engaged in the work of the ministry in any state of the United States or in any foreign country.

Section 14. (NEW) (Effective October 1, 2005)

Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.

Section 15. (NEW) (Effective October 1, 2005)

Wherever in the general statutes the terms "spouse", "family", "immediate family", "dependent", "next of kin" or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term "marriage" is used or defined, a civil union shall be included in such use or definition.

Annulment of Marriages and Civil Unions in Connecticut

A Guide to Resources in the Law Library

- “An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed.” CONN. GEN. STAT. § 46b-40 (2005). [“. . . wherever in the general statutes . . . the term ‘marriage’ is used or defined, a civil union shall be included in such use or definition.” 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005). See [Full Text](#) for exceptions]
- “A decree of annulment . . . shall give the parties the status of unmarried persons and they may marry again.” CONN. GEN. STAT. (2005) § 46b-67(b).
- “We recognize that an annulment and a dissolution of marriage differ fundamentally. An annulment renders the marriage void ab initio [from the beginning] while a dissolution is based upon a valid marriage which terminates as of the date of the judgment of dissolution.” *Durham v. Miceli*, 15 Conn. App. 96, 543 A.2d 286 (1988).
- “Divorce and annulment differ fundamentally. The former is based upon a valid marriage and a cause for terminating it which arises subsequently. *Davis v. Davis*, 119 Conn. 194, 196, 175 A. 574. The latter proceeds upon the theory that the marriage is void ab initio.” *Mazzei v. Cantales*, 142 Conn. 173, 178, 112 A.2d 205 (1955).
- **Incorporation by reference:** “Wherever in the general statutes the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’ or any other term that denotes the **spousal relationship** are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 [*Preparation of certificates*] and 17b-137a [*Social Security number to be recorded on license applications, certain documents and death certificate. Confidentiality.*] of the general statutes, as amended by this act, subdivision (4) of section 45a-727a [*State policy re best interest of the child; public policy re marriage.*], sections 46b-20 to 46b-34 [*Marriage*], inclusive, section 46b-150d [*Emancipation under common law*] of the general statutes, as amended by this act, and section 14 of this act, the term ‘**marriage**’ is used or defined, a civil union shall be included in such use or definition. 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005). (emphasis added).
- “**Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.” 2005 CONN. ACTS 10 § 14 (EFFECTIVE OCTOBER 1, 2005).

Section 3.1

Effect, History and Definition

A Guide to Resources in the Law Library

- SCOPE:**
- Bibliographic resources relating to the legal effect and history of an annulment in Connecticut. Including: how annulments differ from dissolutions and legal separations.
- DEFINITION:**
- “A decree of annulment . . . shall give the parties the status of unmarried persons and they may marry again.” CONN. GEN. STAT. § 46b-67(b) (2005).
 - “We recognize that an annulment and a dissolution of marriage differ fundamentally. An annulment renders the marriage void ab initio [from the beginning] while a dissolution is based upon a valid marriage which terminates as of the date of the judgment of dissolution.” Durham v. Miceli, 15 Conn. App. 96, 543 A.2d 286 (1988)..
 - “A direct action to annul a marriage not only affects the status of the marriage itself but may also affect property rights arising from this status.” Perlstein v. Perlstein, 26 Conn. Sup. 257, 258, 217 A.2d 481 (1966).
- STATUTES:**
- CONN. GEN. STAT. (2005)
§ 46b-67(b) “Neither the ninety-day period specified in this section nor the six-month period referred to in section 46b-53 shall apply in actions for annulment and the court may proceed on any cause of action for annulment in the manner generally applicable in civil actions.”
- CASES:**
- Bernstein v. Bernstein, 25 Conn. Supp. 239, 240, 201 A.2d 660 (1964). “The two causes of action [dissolution and annulment] are distinguishing in that a divorce is based on a valid marriage and a cause which arises subsequently for terminating it, while an annulment is decreed on the theory that the marriage is void ad initio [from its inception].”
 - Perlstein v. Perlstein, 26 Conn. Sup. 257, 260, 217 A.2d 481 (1966). “An action to annul a bigamous marriage may be brought either in the lifetime of the parties or after the death of the supposed husband or wife.”
- WEST KEY NUMBERS:**
- *Marriage* #57 Annulment. Nature and form of remedy.
- TEXTS & TREATISES:**
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 12. Annulment in general
§12.2 Annulment distinguished from divorce
 - LYNN D. WARDLE ET AL., CONTEMPORARY FAMILY LAW: PRINCIPLES, POLICY AND PRACTICE (1988).
§16:01 Definition and history of annulment

- ENCYCLOPEDIAS:**
- 4 AM. JUR. 2D *Annulment of Marriage* §1 (1995).
 - 55 C.J.S. *Marriage* §§ 63-84 (1998).
- PERIODICALS:**
- C.E.P. Davies, *Annulment of Marriage*, 27 CONNECTICUT BAR JOURNAL 41 (1953).
Historical background. Distinction between void and voidable marriages, pp. 61-64.
 - Harriet S. Daggett, *Annulment of a Marriage in Connecticut*, XXV CONNECTICUT BAR JOURNAL 1 (March 1951).
History traced through case law, 1803 - 1940.
- COMPILER:** Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Grounds for Annulment

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the grounds for granting an annulment in Connecticut
- SEE ALSO:** • [§ 3. Defenses to annulment](#)
- DEFINITION:** • “It is well-established law of this state that no marriage performed in this state is to be held void or voidable except for some ground recognized at common law or for some ground which a statute expressly provides shall be ground for annulment.” Manning v. Manning, 16 Conn. Supp. 461, 461-462 (1950).
- STATUTES:** • CONN. GEN. STAT. (2005)
 § 46b-21. Kindred who may not wed
 § 46b-22(a). Who may join persons in marriage
 § 46b-24. License required.
 § 46b-29. Marriage of persons under conservatorship or guardianship
 § 46b-30. Marriage of minors
 § 46b-40(b). “An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed.”
 § 46b-48. Dissolution of marriage or annulment upon conviction of crime against chastity; procedure
 • 2005 CONN. ACTS 10 (Reg. Sess.) (EFFECTIVE OCTOBER 1, 2005).
 “A civil union between persons prohibited from entering into a civil union pursuant to subsection (a) or (b) of this section is void.” 2005 CONN. ACTS 10 § 3(c)(Reg. Sess.) (*Effective October 1, 2005*).
- FORMS:** • 2 CONNECTICUT PRACTICE BOOK (1997).
 Complaint for Annulment, [Form 504.5](#)
 • 1A DOUGLASS B. WRIGHT AND JOHN H. YEOMANS, CONNECTICUT LEGAL FORMS (1983).
 Complaint for Annulment, Form 1101.5
 • 29 COA 431 (1992). Cause of action to annul marriage.
 § 42. Sample complaint
 § 42.10. Sample complaint to annul marriage where there are no children or property
 § 42.20. Sample complaint to annul "mock" marriage
 • 1C AM. JUR. PLEADING & PRACTICE *Annulment Of Marriage* (2003 rev.).
 § 4. Complaint, petition, or declaration—To annul marriage—No children or property
 § 12. Complaint, petition, or declaration—To annul marriage—Mock marriage

- § 21. Complaint, petition, or declaration—To annul marriage on ground of prior existing marriage—Absence of children or property
- § 22. Complaint, petition, or declaration—To annul marriage on ground of prior existing marriage—Absence of children—Property accumulated
- § 23. Complaint, petition, or declaration—To annul marriage on ground of prior existing marriage—Divorce decree not final
- § 36. Complaint, petition, or declaration—To annul incestuous marriage
- § 37. Complaint, petition, or declaration—To annul incestuous marriage—Plaintiff not pregnant
- § 41. Complaint, petition, or declaration—To annul marriage on ground of fraud—Undisclosed intent not to cohabit
- § 69. Complaint, petition, or declaration—To annul marriage on ground of physical incapacity—General form

RECORDS & BRIEFS:

- CONNECTICUT SUPREME COURT RECORDS & BRIEFS, Singh v. Singh, 213 Conn. 637 (November 1989). [Complaint](#).

CASES:

- Brennauer v. Brennauer, No. FA 02-0124680S (Super. Ct. J.D. New London at Norwich, Nov. 14, 2002) “General Statute § 46b-40 (b) states that ‘an annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed.’ ‘It is the well-established law of this state that no marriage performed in this state is to be held void or voidable except for some ground recognized at common law or for some ground which a statute expressly provides shall be ground for annulment.’ *Manning v. Manning*, 16 Conn. Sup. 461, 461-62 (1950). ‘There are statutory grounds for annulment. General Statute § 46b-21 (Marriage of certain kindred); § 46b-22 (Marriage attempted to be celebrated by persons other than those listed); § 46b-24 (Marriage performed in Connecticut without a marriage license); § 46b-29 (Marriage of persons under conservatorship or guardianship); § 46b-30 (Marriages of minors); § 45b-48 (Conviction of an offense against chastity).” *Ross v. Ross*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. FA97-0162587 (1998) (Tierney, J.) (22 Conn.L.Rptr. 637, 638.)”
- Singh v. Singh, 213 Conn. 637, 656, 569 A.2d 1112 (1990). “In conclusion, a marriage between persons related to one another as half-uncle and half-niece is void under General Statutes 46b-21 and 53a-191 as incestuous.”
- Fattibene v. Fattibene, 183 Conn. 433, 439, 441 A.2d 3 (1981). “. . . whether fraud in a case is sufficient to justify an annulment”
- Carabetta v. Carabetta, 182 Conn. 344, 349, 438 A.2d 109 (1980). “In the absence of express language in the governing statute declaring a marriage void for failure to observe a statutory requirement, this court has held in an unbroken line of cases . . . that such a marriage, through imperfect, is dissoluble rather than void.”
- Perlstein v. Perlstein, 26 Conn. Supp. 257, 259, 217 A.2d 481 (1966). “A bigamous marriage is not merely voidable; it is void.”
- Bernstein v. Bernstein, 25 Conn. Supp. 239, 240-241, 201 A.2d 660 (1964). “The concealed intent not to assume the duties of the marital relationship is sufficient cause for an annulment.”
- Hannibal v. Hannibal, 23 Conn. Sup. 201, 202, 179 A.2d 838 (1962). “The plaintiff concedes that there is no case in Connecticut which holds that a fraudulent representation by a wife that she is willing to bear children is a sufficient cause to declare a marriage void.”

- Catalano v. Catalano, 148 Conn. 288, 291, 170 A.2d 726(1961). "It is generally accepted rule that a marriage valid where the ceremony is performed is valid everywhere There are, however, certain exceptions to that rule, including one which regards as invalid incestuous marriages between persons so closely related that their marriage is contrary to the strong public policy of the domicile though valid where celebrated."
- Avery v. Avery, 16 Conn. Sup. 418, 419, 118 A.2d 629 (1949). "Inasmuch as, in this state, fraudulent representation as an inducement to marriage is looked upon as a ground for divorce rather than annulment, it is extremely doubtful that, under our law, any marriage is made voidable by reason of a fraudulent representation of any nature. However that may be, it certainly is true that if a fraudulent representation is to be one which makes the marriage voidable it must be at least as serious as those which give ground for divorce for fraudulent contract. That is, it must be one which goes to the very essence of the marriage relationship."
- Schibi v. Schibi, 136 Conn. 196, 198, 69 A.2d 831 (1949). "The sole question presented to the court for determination was whether the marriage was void because there was no mutual consent of the parties."
- Manning v. Manning, 16 Conn. Supp. 461 (1950). "lack of parental consent does not render a marriage performed in this state either void or voidable."
- State ex rel. Felson v. Allen, 129 Conn. 427, 29 A.2d 306 (1942). *Marriage ceremony performed by unauthorized person.*
- Nerini v. Nerini, 11 Conn. Supp. 361, 367 (1943). "My conclusion on the law, then, is this: all misrepresentations concerning one's health and fitness are immaterial unless they involve the essentialia to the marital relation such as a physical impediment making impossible the performance of the duties and obligations of the relation or rendering its assumption and continuance dangerous to the health or the other spouse or capable of affecting the health of their offspring."
- Doe v. Doe, 11 Conn. Supp. 157 (1942). *Record of the standard laboratory blood test.*
- Davis v. Davis, 119 Conn. 194, 198, 175 A. 574 (1934). "Whether the marriage of the parties to this action is to be declared void because of a lack of consent to the contract, we hold must depend upon the law of New York, in which State the marriage ceremony was performed."
- Lyman v. Lyman, 90 Conn. 399, 403, 97 A. 312 (1916). ". . . the courts are practically agreed in holding that antenuptial pregnancy by another man, if concealed by the wife from the husband, who was himself innocent of improper relations with her, is a fraud upon him justifying a divorce or annulment of the marriage, as the appropriate remedy in the jurisdiction may be."

**WEST KEY
NUMBERS:**

- Marriage #58 "Grounds"

DIGESTS:

- DOWLING'S DIGEST: *Marriage*
- CONNECTICUT FAMILY LAW CITATIONS: *Annulment of Marriage*

ENCYCLOPEDIAS:

- 4 AM. JUR. 2D *Annulment of Marriage* §§2-33 (1995).
 - A. In general
 - B. Unlawful marriages
 - C. Fraud
 - D. Duress

- E. Physical or mental incapacity
- 52 AM. JUR. 2D *Marriage* (2000).
 - §§ 19-23. Mental capacity
 - §§ 24-25. Physical capacity
 - §§ 26-28. Consent
 - §§ 29-35. Formal requirements
 - §§ 51-54. Relationship of parties; Incest
 - §§ 55-61. Prior marriage
 - §§ 65-76. Validity of particular marriages with foreign aspects.
- 55 C.J.S. *Marriage* §65 (1998).
- 1C AM. JUR. PLEADING & PRACTICE *Annulment of Marriage* (2003 rev.).
- John Francis Major, Annotation, *Annulment of Marriage*, 42 POF2d 665 (1985).
- James Lockhart, *Cause Of Action To Annul Marriage*, 29 COA 431 (1992).
- Audrey W. Collins, Annotation, *Sexual Intercourse Between Persons Related by Half Blood As Incest*, 34 ALR5th 723 (1995).
- David E. Rigney, Annotation, *Power Of Incompetent Spouse's Guardian Or Representative To Sue For Granting Or Vacation Of Divorce Or Annulment Of Marriage Or To Make Compromise Or Settlement In Such Suit*, 32 ALR5th 673 (1995).
- Jay M. Zitter, Annotation, *Homosexuality, Transvestism, And Similar Sexual Practices As Grounds For Annulment Of Marriage*, 68 ALR4th 1069 (1989).
- Annotation, *Spouse's Secret Intention Not To Abide By Written Antenuptial Agreement Relating To Financial Matters As Ground For Annulment*, 66 ALR3d 1282 (1975).
- David B. Perlmutter, Annotation, *Incapacity For Sexual Intercourse As Ground For Annulment*, 52 ALR3d 589 (1973).
- Mary J. Cavins, Annotation, *What Constitutes Mistake In The Identity Of One Of The Parties To Warrant Annulment Of Marriage*, 50 ALR3d 1295 (1973).
- Ferdinand S. Tinio, Annotation, *Annulment Of Later Marriage As Reviving Prior Husband's Obligations Under Alimony Decree Or Separation Agreement*, 45 ALR3d 1033 (1972).
- Annotation, *Concealment Of Or Misrepresentation As To Prior Marital Status As Ground For Annulment Of Marriage*, 15 ALR3d 759 (1967).
- Annotation, *Mental Incompetency Of Defendant At Time Of Action As Precluding Annulment Of Marriage*, 97 ALR2d 483 (1964).
- Annotation, *Concealed Premarital Unchastity Or Parenthood As Ground Of Divorce Or Annulment*, 64 ALR2d 742 (1959).
- Annotation, *What Constitutes Intoxication Sufficient To Warrant Annulment Of Marriage*, 57 ALR2d 1250 (1958).
- Annotation, *Refusal Of Sexual Intercourse As Ground For Annulment*, 28 ALR2d 499 (1953).
- Annotation, *What Constitutes Duress Sufficient To Warrant Divorce Or Annulment Of Marriage*, 16 ALR2d 1430 (1951).
- Annotation, *Cohabitation Of Persons Ceremonially Married After Learning Of Facts Negating Dissolution Of Previous Marriage Of One, As Affecting Right To Annulment*, 4 ALR2d 542 (1949).
- 7 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed.1999).
 - Chapter 13. Grounds for annulment

**TEXTS &
TREATISES:**

- § 13.1. In general
- § 13.2. Consanguinity or affinity
- § 13.3. Bigamous marriage
- § 13.4. Incompetence
- § 13.5. Age of parties
- § 13.6. Defects in marriage ceremony or license
- § 13.7. Intentions of the parties—Fraud, force or duress
- § 13.8. Concealment or misrepresentation of facts or circumstances
- HOMER H. CLARK, LAW OF DOMESTIC RELATIONS IN THE UNITED STATES, (2nd ed. 1987). *See index entries under annulment.*
- JOYCE HENS GREEN ET AL. DISSOLUTION OF MARRIAGE (1986).
§3.01 Annulment
- BENJAMIN M. BECKER, LEGAL CHECKLISTS (1966), Checklist 9-1.

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 6 Grounds for Annulment

Grounds	Rutkin*	COA**
Bigamous marriage	§13.3	§§7-8
Consanguinity or affinity	§13.2	§9
Defects in marriage ceremony	§13.6	§22
Duress or undue influence	§13.7	§13
Fraud	§13.7	§§14-21
Incompetence—mental	§13.4	§11
Incompetence—physical	§13.8	§12
Misrepresentation, concealment	§13.8	§§16-19, 21
Nonage	§13.5	§10

* 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed.1999).

** James Lockhart, *Cause Of Action To Annul Marriage*, 29 C.O.A. 431 (1992).

Table 7 Sample Proof of Grounds for Annulment

42 POF2d 665

Concealed intent not to consummate marriage	§§ 23-24
Fraudulent failure to disclose prior undissolved marriage	§§ 18-20
Fraudulent misrepresentation of paternity	§§ 13-16
Marriage entered into under duress	§§ 38-40
Marriage fraudulently induced to obtain permanent resident visa or “green card”	§§ 34-37
Marriage induced by concealment of impotency	§§ 31-33
Mental incapacity to marry due to excessive intoxication	§§ 41-45
Wife’s concealment of sterility	§§ 25-30

Table 8 Concealment or misrepresentation

Concealment or Misrepresentation as Grounds for Annulment of Marriage Selected Cases	
<u>Rice v. Monteleone</u> , No. FA02-0563144S (Conn. Super. Ct., New London, Feb. 25, 2004), 2004 WL 503689.	<p>“In essence, the plaintiff’s claims, which form the bases of her request for an annulment, are that the defendant lied to her in his assertions of love and affection and married her for her money. Even if one assumes for the sake of argument that those claims were proven, they are not sufficient for the entry of an order of annulment.”</p>
DaSilva v. DaSalva, No. 02 0470290 (Conn. Super. Ct., New Haven, April 21, 2003), 2003 WL 21037549.	<p>“The Wife alleged that the Husband had married her for a green card, that he did not contribute to the household financially, that he was not supportive of her, that he was insulting to her, that he did not spend time with her, and that he referred to his family in Brazil as his real family.</p> <p>The only real issue before the court is the allegation regarding the green card. All the other allegations arose after the marriage and are best addressed through a dissolution, not an annulment. They may well be indicta of the allegation, but their mere recitation do not make them evidence or proof.</p> <p>Therefore, the remaining issue before the court is whether or not this marriage is voidable based upon the reason claimed by the Wife.”</p> <p>“From the evidence presented by the Wife at the trial, it is not sufficiently clear that the Husband married the Wife for a green card. The Wife and her two witnesses testified that: the Wife and the Husband had had sexual relations; the Husband contributed financially to the household, although not at the level of contribution that the Wife thought proper; that the Wife and the Husband lived together as husband and wife; the Husband had performed repairs to the marital residence. The Wife and her two witnesses also testified that the Husband: was verbally abusive; unsympathetic to her medical needs; ignored her and her needs; did not take her out with him; did not want to spend time with her; spoke Portuguese in her presence thereby excluding her from conversations. The Wife did not sustain her burden of proving, by clear and convincing evidence, that the conditions leading up to and surrounding the marriage render the marriage void or voidable.”</p> <p style="text-align: right;">[cont’d]</p>

Concealment or Misrepresentation [cont'd]

<p><u>Brennauer v. Brennauer</u>, No. FA 02-0124680S (Conn. Super. Ct., Milford, Nov. 14, 2002), 2002 WL 31687423.</p>	<ul style="list-style-type: none"> • “Counts one, three, four and five seek an annulment of the marriage on the following grounds, respectively: that the defendant had determined prior to the marriage never to cohabit or consummate the marriage and that if the plaintiff had known this, he never would have entered into the marriage; that the defendant created fraud upon the deceived plaintiff in that she concealed facts which would have affected the plaintiffs decision to enter into the marriage; that the defendant lacked the requisite intent to be married and misrepresented her intentions regarding the ceremony; and that the marriage ceremony itself was defective.” • “In count three, the plaintiff is seeking an annulment on the ground that the defendant created a fraud upon him and concealed facts that if known would have prevented him from entering into the marriage.” Ibid. • “In count five, the plaintiff is seeking an annulment on the ground that the ceremony was defective and therefore the marriage is void.” • “The court grants a dissolution of the marital union based upon irretrievable breakdown and declares the parties to be single and unmarried. The plaintiff failed to sustain his burden of proof in his claim for annulment.”
<p><u>Hardy v. Hardy</u>, No. FA 95 57392 S (Conn. Super. Ct., Rockville, Nov. 7, 1995), 1995 WL 669153.</p>	<p>“The plaintiff claims that this marriage is voidable because the defendant fraudulently led her to believe he earned \$22,000 per year when he only earned \$16,000; that he had no outstanding bills when he did; that he failed to pay her for the cost of being added to her medical plan as he promised and that the marriage was not consummated.</p> <p>There was insufficient evidence to prove the defendant fraudulently made any of the representations alleged, and he disputes that the marriage was not consummated.”</p>
<p><u>Roby v. Roby</u>, No. FA94-0245099 (Conn. Super. Ct., Meriden, May 19, 1994).</p>	<p>“The plaintiff claims the misrepresentation of the defendant's status as a father of two children warrants a finding by the court that the “. . . marriage is void or voidable under the laws of this state. . .” General Statutes 46b-40(b). However, such misrepresentation was specifically addressed in <i>Gordon vs. Gordon</i>, 11 Conn. Sup. 302 (1942) where the court found the defendant's failure to reveal he had four other children in addition to the one he admitted was insufficient as a matter of law to conclude the marriage was void. See also, <i>Fattibene vs. Fattibene</i>, 183 Conn. 433 (1981).”</p>
<p><u>Sinojia v. Sinojia</u>, No. 113953 (Conn. Super. Ct., Waterbury, Oct. 3, 1994) 1994 WL 551275.</p>	<p>“It is not sufficiently clear that the defendant entered into this marriage solely to gain access to the U.S.A. via a visa as an alien relative. Since clear and convincing evidence is necessary to prove fraudulent misrepresentation, the court concludes that the plaintiff's evidence falls short. The plaintiff's complaint for annulment is denied.”</p>

Concealment or Misrepresentation [cont'd]

<p><u>Gregor v. Kamerling</u>, No. FA 89-0257042-S (Conn. Super. Ct., New Haven, Aug. 5, 1992), 7 CSCR 1018, 1992 WL 201781.</p>	<p>“The court finds first that there was no concealment, and finds, further, that even if there has been such concealment, that it did not prevent some essential purpose of the marriage.”</p>
<p><u>Phillips v. Dame</u>, No. 518815 (Conn. Super. Ct., New London, Jul. 11, 1991), 6 CSCR 718, 1991 WL 131732.</p>	<p>“Failure to consummate the marriage does not in and of itself constitute grounds for the granting of an annulment.”</p>
<p><u>Fattibene v. Fattibene</u>, 183 Conn. 433, 437, 441 A.2d 3 (1981).</p>	<p>“In the counterclaim to the complaint, the defendant sought an annulment of the marriage based on the plaintiff's fraudulent nondisclosure at the time of the marriage of her prior marital status and of the previous birth of a child. Although there is evidence in the record to the contrary, the defendant alleges that he did not learn of the nondisclosed facts until the commencement of this action, over twenty-five years after the wedding ceremony, and never condoned the plaintiff's fraud or cohabitated with her after discovering it. The trial court decided that a valid marriage existed between the parties and dissolved it, rather than declare it null and void. The defendant claims on appeal that the trial court erred.”</p> <p>“The trial court did not err when it failed to grant the defendant's claim for an annulment based on the plaintiff's nondisclosures or the alleged invalid divorce decree.” (p. 440).</p>
<p><u>Bernstein v. Bernstein</u>, 25 Conn. Sup. 239, 240-241, 201 A.2d 660 (1964).</p>	<p>“To warrant the annulment of a marriage, the cause must be such as goes to the essence of the marriage contract. Consent of the participants is a necessary condition to the creation of a valid marriage relationship, and there must be an intention of the parties to enter into the marriage status. <i>Davis v. Davis</i>, 119 Conn. 194. The concealed intent not to assume the duties of the marital relationship is sufficient cause for an annulment.”</p>
<p><u>Cocco v. Cocco</u>, 23 Conn. Sup. 275, 276, 181 A. 2d 266 (1962).</p>	<ul style="list-style-type: none"> • “Plaintiff claims that the defendant's Mexican divorce is a nullity, hence that defendant was still married to his first wife when plaintiff married him, and that her own marriage is therefore bigamous and void • “In the opinion of the court, there are two main grounds requiring the denial of the annulment. The first one relates to the legal power of the plaintiff to attack the divorce decree. Since she was not a party to the Mexican divorce proceedings, she is a stranger making a collateral attack on the decree.” (p. 277) • “As to plaintiff's legal power to make the attack, even if it be assumed to the contrary, there is no sufficient proof warranting the court, in its opinion, in finding, as claimed by plaintiff, that the present defendant ‘never established a legal domicile’ in Mexico, and that ‘he went to Mexico for the sole purpose of obtaining a divorce.’” (p. 278).

Figure 2: Complaint for Annulment (Form 504.5)

Complaint for Annulment

1. The plaintiff (*or* defendant) whose maiden name was
and the defendant (*or* plaintiff) intermarried on (*date*) at
2. (*Set forth reasons why marriage was invalid or should be annulled*)
3. (*Set forth names and birthdate of any minor child born to the wife since the
marriage, if any, and other information required by § 25-2(b).*)

The plaintiff claims

1. An annulment of said marriage
2. Restoration of her maiden name
3. Lying-in expenses incurred in the future birth of any child issue of this marriage.
4. Custody and support for the minor children
5. Alimony
6. Counsel fees

Figure 3 Complaint

Ret. September 18, 1984	:	Superior Court
David Singh	:	J.D. Hartford-New Britain at
vs.	:	Hartford
Seoranie Sangh	:	August 28, 1984

COMPLAINT

1. The plaintiff and defendant, whose maiden name was Seoranie Shewharain, intermarried at Hartford, Connecticut, on January 13, 1983.

2. The marriage was entered into upon the mistaken belief by both parties that they were not related.

3. The parties have recently discovered that they are uncle and niece.

4. There are no minor children issue of said marriage

5. No other minor children have been born to the defendant since the date of marriage of the parties.

6. The State of Connecticut is not contributing to the support of either party.

Wherefore, plaintiff claims:

1. An annulment of said marriage.

_____ Esq., of Hartford, Connecticut, is recognized in the sufficient sum of \$250.00 to prosecute, etc.

Plaintiff

By _____

His Attorney

Defenses to Annulment

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to defenses to actions for annulment
- SEE ALSO:** • [§2. Grounds for annulment](#)
- COURT RULES:** • CONN. PRACTICE BOOK (2005 ed.)
 § 25-9. Pleadings in general; Amendments to complaint or application;
 Answer, Cross complaint, claims for relief by defendant
 § 25-10. — Answer to cross complaint
 § 25-63. Right to counsel in family civil contempt proceedings
- FORMS:** • 1C AM. JUR. PLEADING AND PRACTICE 565 *Annulment of Marriage* (2003 rev.)
 § 24. Answer—divorce obtained from former spouse in another state
 § 32. Answer—Defense—Parties of lawful age in state where marriage performed
 § 50. Answer—Defense—Statute of limitation
- CASES:** • *Fattibene v. Fattibene*, 183 Conn. 433, 437, 441 A.2d 3 (1981). “In the counterclaim to the complaint, the defendant sought an annulment of the marriage based on the plaintiff’s fraudulent nondisclosure at the time of the marriage of her prior marital status and of the previous birth of a child. Although there is evidence in the record to the contrary, the defendant alleges that he did not learn of the nondisclosed facts until the commencement of this action, over twenty-five years after the wedding ceremony, and never condoned the plaintiff’s fraud or cohabitated with her after discovering it. The trial court decided that a valid marriage existed between the parties and dissolved it, rather than declare it null and void. The defendant claims on appeal that the trial court erred.”
- ENCYCLOPEDIAS:** • 4 AM. JUR. 2D *Annulment of Marriage* (1995).
 III. Defenses (§§34-47)
 A. In General
 §34 Generally
 §35 Equitable defenses: clean hands; estoppel
 B. Postnuptial conduct; ratification of marriage
 §36 Generally; condonation
 §37 Marriage induced by fraud or duress
 §38 Marriage under age of consent
 §39 Cohabitation with knowledge of bigamous marriage
 §40 Refusal of intercourse; refusal to have children
 §41 Impotence
 §42 Mental incompetence
 C. Antenuptial knowledge of ground for annulment
 §43 Generally; physical defect or incapacity; disease

- §44
- §45 Existence of undissolved prior marriage
- §46 Application of doctrine of estoppel and clean hands
- §47 Prohibition of remarriage in divorce decree-
- James Lockhart, *Cause Of Action To Annul Marriage*, 29 C.O.A. 431 (1992). Defenses
 - §23 Generally
 - §24 Prior knowledge of annulment grounds
 - §25 Ratification
 - §26 Ratification or validation of void marriage
 - §27 Nonessential fraud
 - §28 Res Judicata and collateral estoppel
 - §29 Laches, equitable estoppel, and unclean hands

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Procedures in Annulment

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the procedures for obtaining an annulment in Connecticut

SEE ALSO:

- [§ 3.4.1 Jurisdiction](#)
- [§ 3.4.2 Service of process and venue](#)
- [§ 3.4.3 Parties](#)
- [§ 3.4.4 Pleading](#)

STATUTES:

- CONN. GEN. STAT. (2005)
 - Chapter 815** Court Proceedings in Family Relations Matters
 - § 46b-1(3). Family matters defined
 - Chapter 815j** Dissolution of Marriage, Legal Separation and Annulment
 - § 46b-10. Attempt at reconciliation in actions for annulment
 - § 46b-11. Closed hearings and records
 - § 46b-42. Jurisdiction. “The superior court shall have exclusive jurisdiction of all complaints seeking a decree of annulment”
 - § 46b-43. Capacity of minor to prosecute or defend
 - § 46b-45. Service and filing of complaint
 - § 46b-45a. Allegations of pregnancy in pleadings. Disagreement as to paternity. Hearing
 - § 46b-46. Notice to nonresident party. Jurisdiction over nonresident for alimony and support
 - § 46b-48. Annulment upon conviction of crime against chastity; procedures
 - § 46b-49. Private hearings
 - § 46b-55. Attorney General as party. Paternity establishment
 - § 46b-56. Superior court orders re custody and care of minor children in actions for annulment [as amended by P.A. 03-19 § 105]
 - § 46b-62. Orders for payment of attorney’s fees in certain actions
 - § 46b-66a. Order of court re conveyance of title to real property. Effect of decree
 - § 46b-67(b). “Neither the ninety-day period specified in this section nor the six-month period referred to in section 46b-53 shall apply in actions for annulment and the court may proceed on any cause of action for annulment in the manner generally applicable in civil actions.”
 - § 46b-68. Reports to Department of Public Health re annulments
 - § 46b-69. Statutes applicable to matrimonial actions
 - § 46b-69a. Wage executions and earnings assignments

§ 46b-81. Assignment of property and transfer of title
§ 46b-82. Alimony

FORMS:

- 2 CONNECTICUT PRACTICE BOOK (1997)
Complaint for Annulment, [Form 504.5](#)
- 1A DOUGLASS B. WRIGHT AND JOHN H. YEOMANS, CONNECTICUT LEGAL FORMS (1983).
Complaint for Annulment, Form 1101.5

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 14. Procedure in Annulment Actions
 - §14.2 Jurisdiction
 - §14.3 Commencement of Action; Service of Process
 - §14.4 Parties
 - §14.5 Pleadings in Annulment Actions
 - §14.6 Presumption and Burden of Proof
 - §14.7 Judgment and Orders in Annulment Actions

ENCYCLOPEDIAS:

- Maurice T. Brunner, Annotation, *Rule As Regards Competency Of Husband Or Wife To Testify As To Nonaccess*, 49 ALR3d 212 (1973).
- Annotation, *Power Of Incompetent Spouse's Guardian, Committee, Or Next Friend To Sue For Granting Or Vacation Of Divorce Or Annulment Of Marriage, Or To Make A Compromise Or Settlement In Such Suit*, 6 ALR3d 681 (1966).
- Annotation, *Necessity And Sufficiency Of Corroboration Of Plaintiff's Testimony Concerning Ground For Annulment Of Marriage*, 71 ALR2d 620 (1960).
- Annotation, *Limitation Of Actions For Annulment Of Marriage*, 52 ALR2d 1163 (1957).
- Annotation, *Right To Attack Validity Of Marriage After Death Of Party Thereto*, 47 ALR2d 1393 (1956).
- Annotation, *Applicability, To Annulment Actions, Of Residence Requirements Of Divorce Statutes*, 32 ALR2d 734 (1953).
- Annotation, *Antenuptial Knowledge Relating To Alleged Grounds As Barring Right To Annulment*, 15 ALR2d 706 (1951).

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 3.4.1

Jurisdiction

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to jurisdiction in an action for annulment of marriage in Connecticut
- STATUTES:**
- CONN. GEN. STAT. (2005)
 - Chapter 815.** Court proceedings in family relations matters
 - § 46b-1. “Matters within the jurisdiction of the Superior Court deemed to be family relations matters shall be matters affecting or involving . . . (3) annulment of marriage”
 - Chapter 815j** Dissolution of Marriage, Legal Separation and Annulment
 - § 46b-42. Jurisdiction. “The superior court shall have exclusive jurisdiction of all complaints seeking a decree of annulment”
 - § 46b-43. Capacity of minor to prosecute or defend
 - § 46b-46. Notice to nonresident party. Jurisdiction over nonresident for alimony and support
 - § 46b-67(b). “Neither the ninety-day period specified in this section nor the six-month period referred to in section 46b-53 shall apply in actions for annulment and the court may proceed on any cause of action for annulment in the manner generally applicable in civil actions.”
- CASES:**
- Manndorff v. Dax, 13 Conn. App. 282, 284-285, 535 A.2d 1324 (1988). “Although the annulment statutes do not specifically say so, the parties agree, as do we, that there is an additional requirement with respect to subject matter jurisdiction over annulment actions. At least one party must be domiciled in Connecticut.”
 - Mazzei v. Cantales, 142 Conn. 173, 176, 112 A.2d 205 (1955). “But the statutory provisions concerning residence and domicile and service by order of notice pertain, by their terms, only to actions for divorce. The legislature has manifested no intention that they shall apply to actions for annulment.”
 - Mazzei v. Cantales, 142 Conn. 173, 179 (1955), 112 A.2d 205 (1955). “Where both parties to an action for annulment of a void marriage are non-residents and the defendant is not served with process within this state or does not appear and submit to the jurisdiction of the Superior Court, the fact that the marriage was performed within this state does not empower the court to obtain jurisdiction over the defendant by constructive service and to render a judgment annulling the marriage.”
 - Perlstein v. Perlstein, 152 Conn. 152, 160, 204 A.2d 909 (1964). “It follows that the statute (§52-68) generally governing service by publication on a nonresident defendant properly applies to an annulment action, where, as here, the plaintiff is domiciled in Connecticut.”
- WEST KEY**
- Marriage #60(3)

NUMBERS:

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 14. Procedure in Annulment Actions
§ 14.2 Jurisdiction

ENCYCLOPEDIAS:

- 4 AM. JUR. 2D 734 *Annulment of Marriage* § 50 (1995).
- 55 C.J.S. *Marriage* § 67 (1998).
- Annotation, *Applicability, To Annulment Actions, Of Residence Requirements Of Divorce Statutes*, 32 ALR2d 734 (1953).

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Service of Process and Venue

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the procedures for service of process in an action for annulment of marriage.

DEFINITIONS:

- **PROCESS:** “shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff’s complaint.” CONN. PRACTICE BOOK §8-1(a) (2005 ed.).
- **MANNER OF SERVICE:** “Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” CONN. GEN. STATS. §52-57(a) (2005)
- **USUAL PLACE OF ABODE:** “It is clear that one’s ‘usual place of abode’ is in the place where he would most likely have knowledge of service of process Its chief purpose is to ensure actual notice to the defendant that the action is pending The usual place of abode is generally considered to be the place where the person is living at the time of service It is not necessarily his domicile . . . and a person may have more than one usual place of abode In the final analysis, the determination of one’s usual place of abode is a question of fact and the court may consider various circumstances.” *Plonski v. Halloran*, 36 Conn. Supp. 335, 335-336, 420 A.2d 117 (1980).
- **VENUE:** “A proceeding for annulment . . . shall be commenced by the service and filing of a complaint as in all other civil actions in the Superior Court for the judicial district in which one of the parties resides.” CONN. GEN. STAT. § 46b-45(a) (2005).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 815j.** Dissolution of marriage, Legal separation and Annulment
 - § 46b-45. Service and filing of complaint.
 - § 46b-46. Notice to nonresident party
 - Chapter 896.** Civil actions
 - § 52-46. Time for service
 - § 52-48. Return day of process
 - § 52-50. Persons to whom process shall be directed
 - § 52-54. Service of summons
 - § 52-57(a). Manner of service upon individuals

COURT RULES:

- CONNECTICUT PRACTICE BOOK (2005 ed.)
 - Chapter 8. Commencement of action
 - §8-1. Mesne Process
 - §8-2. Waiver of court fees and costs
 - Chapter 10. Pleadings
 - §10-12. Service of pleadings and other papers; responsibility of counsel or pro se party; documents and persons to be served

§10-13. —Method of service
 §10-14. —Proof of service
 §10-15 —Numerous defendants
 §10-16. —Several parties represented by one attorney
 §10-17. —Service by indifferent person
 Chapter 25. Procedure in Family Matters
 §25-28 Order of Notice

COURT FORMS:

- JD-FM-3. Family Summons
- JD-FM-168, Order of notice by publication or mail in family cases

CASES:

- Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 262, 566 A2d 457(1989).
 “In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to come within the court’s jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible This rule does not apply, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process.”
- Gluck v. Gluck, 181 Conn. 225, 435 A.2d 35 (1980). *Abode service*.
- Smith v. Smith, 150 Conn. 15, 183 A.2d 848 (1962).

**WEST KEY
NUMBERS:**

- Marriage #60(4)
- Process # 1 et seq.

ENCYCLOPEDIAS:

- 72 C.J.S. *Process* §2 et seq. (1987).

TEXTS:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
 Chapter 14. Procedure in Annulment Actions
 § 14.3 Commencement of action; Service of process

COMPILER:

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06424. (860) 343-6560. Email: larry.cheeseman@jud. state.ct.us

Section 3.4.3

Parties

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to proper or necessary parties to an action for annulment of marriage in Connecticut
- STATUTES:**
- CONN. GEN. STAT. (2005)
Chapter 815j Dissolution of Marriage, Legal Separation and Annulment
§ 46b-43. Capacity of minor to prosecute or defend
§ 46b-45(a). "The complaint may also be made by the Attorney General in a proceeding for annulment of a void marriage."
- COURT RULES:**
- CONNECTICUT PRACTICE BOOK (2005 ed.)
Chapter 9. Parties
§ 9-1. Continuance for absent or nonresident defendant
§ 9-3. Joinder of parties and actions; interested persons as plaintiffs
§ 9-4. —Joinder of plaintiffs in one action
§ 9-5. —Consolidation of actions
§ 9-6. —Interested persons as defendants
§ 9-18. Addition or substitution of parties; additional parties summoned in by court
§ 9-19. —Nonjoinder and misjoinder of parties
§ 9-22. —Motion to cite in new parties
§ 9-24. Change of name by minor children
Chapter 10. Pleadings
§ 10-12. Service of the pleadings and other papers; responsibility of counsel or pro se party; documents and persons to be served
§ 10-13. —Method of service
§ 10-14. —Proof of service
§ 10-15. —Numerous defendants
§ 10-16. —Several parties represented by one attorney
§ 10-17. —Service by indifferent person
- CASES:**
- Anderson v. Anderson, 27 Conn. Sup. 342, 343, 238 A.2d 45 (1967). "This action raises the question: Is the plaintiff, a Connecticut resident, a 'guilty' party to a bigamous marriage entered into in the state of New York, entitled to a decree declaring that marriage null and void?"
 - Manndorf v. Dax, 13 Conn. App. 282, 287, 535 A.2d 1324 (1988). "Although interested in the defendant's marriage to the husband, the plaintiff, as a nonparty to that marriage, had no right to maintain an action for its annulment."
 - O'Brien v. O'Brien, 3 Conn. Sup. 1, 4 (1935). "There is no question, under the evidence, that the invalidity of the marriage was never judicially pronounced and none that any effort was ever made to bring its legality into question before Harriet O'Brien died. Harriet O'Brien's death ended all opportunity of ever doing so."

**WEST KEY
NUMBER:**

- Marriage # 60(5)

DIGESTS:

- ALR Digest: Marriage §49

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 14 . Procedure in Annulment Actions
§ 14.4 Parties

ENCYCLOPEDIAS:

- 4 AM. JUR. 2D *Annulment of Marriage* §§ 61-67 (1995)
- 55 C.J.S. *Marriage* § 69 (1998).

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 3.4.4

Pleading

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the pleading in an annulment in Connecticut

STATUTES:

- CONN. GEN. STAT. (2005)
Chapter 815j Dissolution of Marriage, Legal Separation and Annulment
§ 46b-45. Service and filing of complaint

COURT RULES:

- CONNECTICUT PRACTICE BOOK (2005 ed.)
 - § 25-1 Definitions applicable to proceeding on family matters
 - § 25-2 Complaint for annulment
 - § 25-5 Automatic orders upon service of complaint
 - § 25-9 _____. Answer, cross complaint, claims for relief by defendant
 - § 25-10 _____. Answer to cross complaint

FORMS:

- 2 CONNECTICUT PRACTICE BOOK (1997). [Complaint for Annulment, Form 504.5](#)
- 1A DOUGLASS B. WRIGHT AND JOHN H. YEOMANS, CONNECTICUT LEGAL FORMS (1983).
Complaint for Annulment, Form 1101.5
- 29 COA 431 (1992). Cause of action to annul marriage.
 - § 42. Sample complaint
 - § 42.10. Sample complaint to annul marriage where there are no children or property
 - § 42.20. Sample complaint to annul "mock" marriage
- 1C AM. JUR. PLEADING & PRACTICE *Annulment Of Marriage* (2003 rev.).
 - § 4. Complaint, petition, or declaration—To annul marriage—No children or property
 - § 12. Complaint, petition, or declaration—To annul marriage—Mock marriage
 - § 21. Complaint, petition, or declaration—To annul marriage on ground of prior existing marriage—Absence of children or property
 - § 22. Complaint, petition, or declaration—To annul marriage on ground of prior existing marriage—Absence of children—Property accumulated
 - § 23. Complaint, petition, or declaration—To annul marriage on ground of prior existing marriage—Divorce decree not final
 - § 36. Complaint, petition, or declaration—To annul incestuous marriage—General form
 - § 37. Complaint, petition, or declaration—To annul incestuous marriage—Another form
 - § 41. Complaint, petition, or declaration—To annul marriage on ground of fraud—Undisclosed intent not to cohabit
 - § 69. Complaint, petition, or declaration—To annul marriage on ground of physical incapacity—General form

**RECORDS &
BRIEFS:**

- CONNECTICUT SUPREME COURT RECORDS & BRIEFS, Singh v. Singh, 213 Conn. 637 (November 1989). [Complaint](#).

CASES:

- Durham v. Miceli, 15 Conn. App. 96, 97, 543 A.2d 286 (1988). “In order to be entitled to an annulment of marriage, the plaintiff must allege and prove that ‘the marriage is void or voidable under the laws of this state or, the state in which the marriage was performed.’ General Statutes § 46b-40(b). The plaintiff’s complaint is devoid of such allegations.”

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 14 . Procedure in Annulment Actions
§ 14.5. Pleadings in annulment actions

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Children and Annulment

A Guide to Resources in the Law Library

- SCOPE:**
- Bibliographic resources relating to the matters children and annulment including child support, custody and visitation
- STATUTES:**
- CONN. GEN. STAT. (2005)
Chapter 815j. Dissolution of marriage, Legal separation and Annulment
§ 46b-60. Orders re Children and Alimony in Annulment Cases.
“The issue of any void or voidable marriage shall be deemed legitimate.”
- CASES:**
- Hames v. Hames, 163 Conn. 588, 593, 316 A.2d 379 (1972). “Section 46-28 of the General Statutes provides that the issue of any void or voidable marriage shall be deemed legitimate and permits the Superior Court to order alimony, custody and child support as it might in a divorce proceeding.”
 - Sarantos v. Sarantos, 18 Conn. Supp. 472, 474 (1953). “Our statute (§ 7341) empowers our court to annul a marriage illegal under the laws of the foreign state in which it was celebrated. It does not purport to carry over to Connecticut the foreign law of the state in which the marriage was celebrated as to the legitimacy of the offspring of such marriage. The question of legitimacy under the facts here is governed by the law of Connecticut, which at the time of the child's birth was, and up to the present time continuously has been, the domicile of both parents and of the child.”
- TEXTS & TREATISES:**
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 14. Procedure in Annulment Actions
§ 14.8 Legitimacy of children
- ENCYCLOPEDIAS:**
- 4 AM. JUR. 2D *Annulment of Marriage* §85 (1995).
 - 55 C.J.S. *Marriage* §64 (1998).
 - George L. Blum, Annotation, *Grandparents' Visitation Rights Where Child's Parents Are Living*, 71 ALR5th 99 (1999). § 9. 'Where child's parents' marriage is annulled."
 - Annotation, *Court's Power As To Custody And Visitation Of Children In Marriage Annulment Proceedings*, 63 ALR2d 1008 (1959).
 - Annotation, *Court's Power As To Support And Maintenance Of Children In Marriage Annulment Proceedings*, 63 ALR2d 1029 (1959).
- COMPILER:**
- Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 3.6

Out of State and Foreign Annulments

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to out-of-state and foreign annulments in Connecticut
- DEFINITION:**
- “A state has the authority to declare what marriages of its citizens shall be recognized as valid, regardless of the fact that the marriages may have been entered into in foreign jurisdictions where they were valid. Catalano v. Catalano, 148 Conn. 288, 291, 170 A.2d 726 (1961).
 - “The Superior Court has authority to annul a marriage performed in another state if the marriage would have been invalid in that state or violates a strong public policy of this state.” Fattibene v. Fattibene, 183 Conn. 433, 437, 441 A.2d 3 (1981).
- STATUTES:**
- CONN. GEN. STAT. (2005)
Chapter 815j. Dissolution of marriage, Legal separation and Annulment
§ 46b-40(b). Grounds for Annulment. “An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed.”
- CASES:**
- Fattibene v. Fattibene, 183 Conn. 433, 437, 441 A.2d 3 (1981). “The Supreme Court has authority to annul a marriage performed in another state if the marriage would have been invalid in that state or violates a strong public policy of this state.”
 - Delaney v. Delaney, 35 Conn. Supp. 230, 232, 405 A.2d 91 (1979). “. . . a valid common-law marriage contracted in a state that recognizes such marriages would be upheld in this state.”
 - Parker v. Parker, 29 Conn. Supp. 41, 43, 270 A.2d 94 (1970). “The validity of the marriage between the plaintiff and the defendant is governed by the *lex loci contractus* . . . where the ceremony was performed.”
 - Catalano v. Catalano, 148 Conn. 288, 291, 170 A.2d 726 (1961).. “It is generally accepted rule that a marriage valid where the ceremony is performed is valid everywhere There are, however, certain exceptions to that rule, including one which regards as invalid incestuous marriages between persons so closely related that their marriage is contrary to the strong public policy of the domicile though valid where celebrated.”
 - Browner v. Browner, 15 Conn. Supp. 77 (1947). “This marriage was contracted in the state of New York and consequently may be annulled by this court if, for any cause, it is void or voidable under New York law.”

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 1999).
Chapter 14 . Procedure in Annulment Actions
§ 14.10 Annulment of foreign marriages

COMPILER:

Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 9 Unreported Connecticut Decisions on Annulment of Marriage

Recent Unreported Connecticut Decisions	
<u>Rice v. Monteleone</u> , No. FA02-0563144S (Conn. Super. Ct., New London, Feb. 25, 2004), 2004 WL 503689	“In essence, the plaintiff's claims, which form the bases of her request for an annulment, are that the defendant lied to her in his assertions of love and affection and married her for her money. Even if one assumes for the sake of argument that those claims were proven, they are not sufficient for the entry of an order of annulment.”
<u>DaSilva v. DaSilva</u> , No. 02 0470290 (Conn. Super. Ct., New Haven, Apr. 21, 2003), 2003 WL 21037549.	“It is the plaintiff's burden of proof to prove the grounds for annulment. <i>Fattibene v. Fattibene</i> , 183 Conn. 433 (1981). ‘A petition for the annulment of a marriage requires of the court hearing . . . great caution and demands clear proof.’ <i>Davis v. Davis</i> , 119 Conn. 194 (1934).’ It must find that the conditions leading up to and surrounding the marriage have been established by clear and convincing evidence to be such as to render the marriage void or voidable.’ <i>Trotta v. Trotta</i> , 5 Conn. Sup. 218 (1937). ‘An annulment is not favored.’ <i>Durham v. Miceli</i> , 15 Conn. App. 96 (1988). Marriages are strongly favored by the law. Existing marriages are presumed to be valid and that presumption has been described by the courts as very strong. <i>Carabetta v. Carabetta</i> , 183 Conn. 344 (1980); and <i>Manndorff v. Dax</i> , 13 Conn. App. 282 (1988). <i>Carabetta</i> found the public policy favoring marriages so strong that it upheld an unlicensed ceremony.”
<u>Hassan v. Hassan</u> , No. FA01-0632261 (Conn. Super. Ct., Hartford, Sep. 30, 2001), 2001 WL 1329840.	"In the present case, the plaintiff claims she was pregnant with the defendant's child, hence the marriage had been 'consummated' prior to the ceremony. As to the issue of consummation, the fact situation is quite similar to <i>Schibi</i> [136 Conn. 196, 199, 69 A.2d 831 (1949)]. The lack of consummation surely is not sufficient grounds for the marriage to be declared void and it seems unlikely, given <i>Schibi</i> , that it is even grounds to find the marriage voidable and consequently subject to annulment.”
<u>Duren v. Burwood</u> , No. FA 01 0084521 (Conn. Super. Ct., Litchfield, Aug. 29, 2001) 2001 WL 1159629.	<p>"In the first count the plaintiff seeks an annulment on the grounds that the marriage is voidable because the plaintiff was fraudulently induced to enter the marriage. The court heard evidence from the plaintiff that he expected a monogamous relationship with the defendant when he married her. The defendant engaged in an extramarital relationship almost immediately after the marriage with a guest at the wedding. The defendant testified that she had expected that the marriage would be 'open'. There was no discussion regarding these expectations before the marriage.</p> <p>As the court noted in <i>Ross v. Ross</i>, 22 Conn.L.Rptr 637 (1998),</p> <p>It is the plaintiff's burden of proof to prove the grounds for annulment. <i>Fattibene v. Fattibene</i>, supra, 183 Conn. 438. 'A petition for the annulment of a marriage on this ground requires of the court hearing it great caution and demands clear proof' <i>Davis v. Davis</i>, 119 Conn. 194, 203 (1934). 'It must find that the conditions leading up to and surrounding the marriage have been established by clear and convincing evidence to be such as to render the marriage void or voidable.' <i>Trotta v. Trotta</i>, 5 Conn. Sup. 218,</p>

	<p>223 (1937). 'An annulment is not favored.' <i>Durham v. Miceli</i>, 15 Conn. App. 96, 97 (1988).</p> <p>The court finds that the plaintiff has failed to prove the allegations to support a judgment of annulment."</p>
<p><u>Ross v. Ross</u>, No. FA97 0162587 S (Conn. Super. Ct., Stamford/Norwalk, Aug. 10, 1998), 1998 WL 516159.</p>	<p>"Although in 1973 the Connecticut legislature made it virtually impossible for a court to reject a complaint for a dissolution of marriage, no such statute was passed concerning annulments. In most reported contested annulment cases tried to Connecticut courts since 1973, the request for annulment has been denied. Most complaints allege a second count, a fall-back position, seeking a dissolution of marriage. In most of those cases the decree dissolving the marriage was entered."</p>
<p><u>Gutkowski v. Gutkowski</u>, No. FA 967125715 (Conn. Super. Ct., Hartford, Nov. 4, 1996), 1996 WL 651641.</p>	<p>"This court acknowledges the principle that a legal representative of a decedent's estate may pursue an annulment action that had been commenced prior to death. While the lessons of <i>Perlstein v. Perlstein</i> remain vital, however, they should only apply to an action in which a fiduciary of a married party's estate seeks to obtain an annulment of a marriage to which its decedent was a party. As such, <i>Perlstein v. Perlstein</i>, supra, fails to provide adequate guidance for this court, which must assess the status of <i>non-fiduciaries</i> who seek to secure the annulment of a marriage which terminated by reason of death prior to the assertion of their claims."</p>

Dissolution of Marriage or Civil Union in Connecticut

A Guide to Resources in the Law Library

- “A marriage [or civil union] is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of marriage by a court of competent jurisdiction.” CONN. GEN. STAT. § 46b-40(a) (2005). [“... wherever in the general statutes ... the term ‘marriage’ is used or defined, a civil union shall be included in such use or definition.” 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005). See [Full Text](#) for exceptions]
- “We recognize that an annulment and a dissolution of marriage differ fundamentally. An annulment renders the marriage void ab initio [from the beginning] while a dissolution is based upon a valid marriage which terminates as of the date of the judgment of dissolution.” *Durham v. Miceli*, 15 Conn. App. 96, 543 A.2d 286 (1988).
- **Civil Union:** “Wherever in the general statutes the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’ or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term ‘marriage’ is used or defined, a civil union shall be included in such use or definition. 2005 CONN. ACTS 10 § 15 (Effective October 1, 2005).
- “**Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.” 2005 CONN. ACTS 10 § 14 (EFFECTIVE OCTOBER 1, 2005).

Section 4.1.0

Grounds for Dissolution of Marriage, Civil Union or Legal Separation

“A decree of dissolution of a marriage or a decree of legal separation shall be granted upon a finding that one of the following causes has occurred:

- (1) The marriage has broken down irretrievably;
- (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled;
- (3) adultery;
- (4) fraudulent contract;
- (5) wilful desertion for one year with total neglect of duty;
- (6) seven years' absence, during all of which period the absent party has not been heard from;
- (7) habitual intemperance;
- (8) intolerable cruelty;
- (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year;
- (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.”

CONN. GEN. STAT. § 46b-40(c) (2005).

Section 4.1.1

No Fault Grounds

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to a no fault dissolution of marriage (divorce) commenced after October 1, 1997

DEFINITIONS:

- **No fault divorce:** "A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred: (1) the marriage has broken down irretrievably; (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled . . ." CONN. GEN. STAT. § 46b-40(c) (2005).
- "Incompatibility of personalities is not and has never been a ground for divorce in Connecticut. Under our law, married persons are expected to accept the ordinary vicissitudes of marriage caused by unwise mating, unhappy situations, unruly tempers and common quarrels or marital wranglings." *Nowak v. Nowak*, 23 Conn. Sup. 495, 497, 185 A.2d 83 (1962).
- **Irretrievable breakdown:** "In 1973, by No. 73-373 of the 1973 Public Acts (P.A. 73-373), the legislature effected an historic revision of our marital dissolution statutes. That legislation introduced certain new concepts to our family law, such as the irretrievable breakdown of the marriage as a ground for dissolution." *Doe v. Doe*, 244 Conn. 403, 433, 710 A.2d 1297 (1998).
- "The determination of whether a breakdown of a marriage is irretrievable is a question of fact to be determined by the trial court." *Eversman v. Eversman*, 4 Conn. App. 611, 614, 496 A.2d 210 (1985).
- "The absence of objective guidelines does not mean an abdication of judicial function, nor does it signal, as the defendant argues, that a court determining whether a marriage has in fact irretrievably broken down is acting purely ministerially or is granting a divorce 'upon demand.' It does, however, sustain the trial court's conclusion that the defendant's decision to rearrange his business ventures after the initiation of divorce proceedings does not necessarily repair the rupture in the marital relationship that had previously occurred." *Joy v. Joy*, 178 Conn. 254, 255-256, 423 A.2d 895 (1979).

STATUTES:

- CONN. GEN. STAT. (2005).
 - § 46b-40(c). Fault and no fault grounds for divorce or legal separation
 - § 46b-51. Stipulation of parties and finding of irretrievable breakdown

COURT RULES:

- CONN. PRACTICE BOOK (2005).
 - Chapter 25. **Procedure in Family Matters**
 - § 25-2. Complaints for dissolution of marriage, legal separation, or annulment
 - § 25-7. Pleadings in general; Amendments to complaint or

application

§ 25-8. —Amendment; New grounds for dissolution of marriage

§ 25-9. —Answer, cross complaint, claims for relief by defendant

§ 25-10. —Answer to cross complaint

CASES:

- Grimm v. Grimm, 82 Conn. App. 41, 48, 844 A.2d 855 (2004). “The defendant failed to demonstrate that the court improperly found that the marriage had broken down irretrievably. The record clearly demonstrates the breakdown in the parties' marriage. The fact that the defendant claims to maintain hope for reconciliation will not support a finding that there are prospects for reconciliation. The allegations raised by the plaintiff concerning the difficulties in the marriage were serious and spanned almost the entire length of the marriage. The court was within its discretion to credit the plaintiff's version of the facts that the pattern of litigation was the result of the defendant's attempt to thwart the dissolution proceedings, not the plaintiff's lack of intent to end the marriage. Accordingly, we conclude that the court did not improperly find that the marriage had broken down irretrievably.”
- Evans v. Taylor, 67 Conn. App. 108, 115, 786 A.2d 525 (2001). "On the basis of the record, we conclude that the court could reasonably have found that the defendant had failed to establish her claim of intolerable cruelty, and therefore it was not clearly erroneous for the court to reject intolerable cruelty as a ground for dissolution and instead grant the dissolution of the marriage on the ground of irretrievable breakdown."
- Sweet v. Sweet, 190 Conn. 657, 659, 462 A.2d 1031 (1983). "Section 46b-51 allows the court to avoid specifying fault for the breakdown of the marriage and allows the parties to avoid calling friends or relatives to testify as to the reasons for the breakdown."
- Eversman v. Eversman, 4 Conn. App. 611, 614, 496 A.2d 210 (1985). “The determination of whether a breakdown of a marriage is irretrievable is a question of fact to be determined by the trial court The fact that the defendant maintains hope for reconciliation will not support a finding that there are prospects for a reconciliation A difference, to be irreconcilable, need not necessarily be so viewed by both parties.”
- Sweet v. Sweet, 190 Conn. 657, 659-670, 462 A.2d 1031 (1983). “Section 46b-51 allows the court to avoid specifying fault for the breakdown of the marriage. . . . In contrast with 46b-51, under the statutes governing the assignment of the property of the parties or the award of alimony in a contested proceeding, the court is required to consider the causes for the dissolution of the marriage.”
- Posada v. Posada, 179 Conn. 568, 572, 427 A.2d 406 (1980). “No-fault divorce does not mean that the causes of a marital breakup are always irrelevant, but it does mean that determining cause is not crucial to the judicial administration of matrimonial matters.”
- Gluck v. Gluck, 181 Conn. 225, 227, 435 A.2d 35 (1980). "Next, the defendant asserts that General Statutes 46b-40 (c), to the extent that it authorizes the dissolution of a marriage if the marriage has broken down irretrievably, is vague, nullifies the other grounds for dissolution, prevents defenses and impairs the obligation of contracts, all in violation of constitutional strictures. The vagueness issue was resolved in *Joy v. Joy*, 178 Conn. 254, 255-56, 423 A.2d 895 (1979); what was said there need not be repeated here. The gravamen of the unparticularized claim that irretrievable breakdown nullifies the other grounds for dissolution set forth in 46b-40 (c) and prevents defenses appears to be that the legislature has sanctioned divorce on demand. This claim too was rejected in *Joy v. Joy*, supra. The

notion that allowing marital dissolutions based on irretrievable breakdown impairs the obligation of contracts within the meaning of article one, 10 of the United States constitution is bankrupt. Marriage is not a contract within the meaning of this clause of the constitution. *Maynard v. Hill*, 125 U.S. 190, 210, 8 S.Ct. 723, 31 L.Ed. 654 (1888)."

- *Joy v. Joy*, 178 Conn. 254, 256, 423 A.2d 895 (1979). "The defendant claims that 46-32 (c) is unconstitutional unless this court imposes judicial standards or guidelines to limit discretionary fact-finding by the trial courts of this state. We disagree. At least since *Maynard v. Hill*, 125 U.S. 190, 210-14, 8 S.Ct. 723, 31 L.Ed. 654 (1888), it has been clear that the legislature has plenary power to determine the circumstances under which a marital relationship is created and terminated The legislature could rationally conclude that public policy requires an accommodation to the unfortunate reality that a marital relationship may terminate in fact without regard to the fault of either marital partner, and that such a relationship should therefore be dissoluble in law upon a judicial determination of irretrievable breakdown. Courts in other jurisdictions with similar statutes have unanimously upheld the constitutionality of no-fault divorce."
- *McEvoy v. McEvoy*, 99 Conn. 427, 421, 122 A. 100 (1923). "But there are trials causing much weariness and suffering, which parties to the marriage contract must bear; the policy of the State, as well as the sacred nature of the marriage covenant, requires patient endurance."

**WEST KEY
NUMBERS:**

- *Divorce* #12. Causes for divorce in general
- *Divorce* #34. Inability to live together
- *Divorce* #36. Voluntary separation

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Irretrievable breakdown*
- DOWLING'S DIGEST: *Dissolution of marriage* § 7

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 22-24. No-Fault grounds
§§ 25-34. Voluntary separation
- 27A C.J.S. *Divorce* (1986).
§§ 13-70. Grounds; No-Fault divorce
- *Dissolution Of Marriage On Statutory Ground Of Incompatibility*, 19 POF2d 221(1979).
- James L. Rigelhaupt, Annotation, *What Constitutes "Incompatibility" Within Statute Specifying It As Substantial Ground for Divorce*, 97 ALR3d 989 (1980).
- Jack W. Short, Jr., Annotation, *Validity, construction, and effect of 'no-fault' divorce statute providing for dissolution of marriage upon finding that relationship is no longer viable*, 55 ALR3d 581 (1974).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15. Dissolution of marriage in general
§ 15.2 Breakdown of marriage relationship
§ 15.3 Constitutionality of no-fault law
§ 15.4 Other grounds for dissolution
§ 15.5 Separation for eighteen months

LAW REVIEWS:

- Robert M. McAnernery and Samuel V. Schoommaker III, *Connecticut's New Approach To Marriage Dissolution*, 47 CONNECTICUT BAR JOURNAL

375 (1973).

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Table 10 Grimm v. Grimm

<p style="text-align: center;"><u>Grimm v. Grimm</u> 82 Conn. App. 41, 844 A.2d 855 (2004)</p>	
<p>“In this appeal, the defendant, Robert L. Grimm, claims that (1) General Statutes § 46b-40 (c)(1) violates the free exercise of religion clauses of the federal and state constitutions,(2) the trial court improperly concluded that the parties' marriage had irretrievably broken down and precluded expert testimony on the subject, (3) the court improperly determined the financial orders, (4) the court improperly denied his motion to open the evidence prior to judgment for the purpose of offering certain evidence and (5) the court improperly denied his motion to dismiss or to transfer the matter to another judicial district. We reverse the judgment as to the award of counsel fees only and affirm the judgment in all other respects.” p. 43.</p>	
<p>Constitutional issues</p> <p>Free exercise of religion</p>	<p>“The defendant first claims that § 46b-40 (c)(1) violates the free exercise of religion clauses of the federal and state constitutions. The defendant argues that, as applied to him, § 46b-40 (c)(1) violates his religious beliefs and liberties because his faith opposes divorce. We disagree.” pp. 44-45</p> <p>“The United States Supreme Court has ‘consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’ (Internal quotation marks omitted.) <i>Employment Division, Dept. of Human Resources of Oregon v. Smith</i>, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). General Statutes § 46b-40 (c)(1) is a valid and neutral law of general applicability. The statute does not in any manner infringe on the defendant's right to exercise his religious beliefs merely because it permits the plaintiff to obtain a divorce from him against his wishes.” p. 45</p>
<p>Irretrievable breakdown</p>	<p>““The determination of whether a breakdown of a marriage is irretrievable is a question of fact to be determined by the trial court.’ <i>Eversman v. Eversman</i>, 4 Conn. App. 611, 614, 496 A.2d 210, cert. denied, 197 Conn. 806, 499 A.2d 57 (1985). ‘We decline, as have other courts that have considered the issue . . . to circumscribe this delicate process of fact-finding by imposing the constraint of guidelines on an inquiry that is necessarily individualized and particularized.’ (Citations omitted.) <i>Joy v. Joy</i>, supra, 178 Conn. [254,] 255.” p. 47.</p>
<p>Expert Testimony</p>	<p>“The defendant claims that he was precluded from presenting expert testimony from a third party witness that the marriage had not irretrievably broken down. The court reasoned that whether the marriage had broken down irretrievably was ‘an ultimate issue to be decided by the trier of fact’ and that the court ‘does not need expert assistance in deciding that issue.’”p. 49.</p>

Financial orders	<p>“Our Supreme Court and this court ‘have often described financial orders appurtenant to dissolution proceedings as ‘entirely interwoven’ and as ‘a carefully crafted mosaic, each element of which may be dependent on the other.’ . . . Consequently, when an appellate court reverses a trial court judgment based on an improper alimony, property distribution, or child support award, the appellate court’s remand typically authorizes the trial court to reconsider all of the financial orders.’ (Citations omitted; internal quotation marks omitted.) <i>Smith v. Smith</i>, 249 Conn. 265, 277, 752 A.2d 1023 (1999); <i>Ehrenkranz v. Ehrenkranz</i>, 2 Conn. App. 416, 424, 479 A.2d 826 (1984). ‘Every improper order, however, does not necessarily merit a reconsideration of all of the trial court’s financial orders. A financial order is severable when it is not in any way interdependent with other orders and is not improperly based on a factor that is linked to other factors.’ <i>Smith v. Smith</i>, supra, [249 Conn. 265,] 277. In determining the appropriate remedy, ‘we focus on the specific language of the trial court’s order as set forth in its [decision].’ <i>Id.</i>, 278. As previously discussed, the court made no finding that an award of counsel fees was necessary to avoid undermining its other financial orders. The plaintiff, moreover, has not requested and presumably would not benefit from a remand in this case which comes to us in the context of its ‘tortured history.’” <i>Grimm v. Grimm</i>, 74 Conn. App. 407. Because we conclude that the award of counsel fees is severable from the other financial orders, it is not necessary to remand the case for reconsideration of the other financial orders.” pp. 55-56</p>
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Section 4.1.2

Fault Grounds

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to dissolution of marriage (divorce) based upon fault grounds.

DEFINITIONS:

- **Fault grounds:** “A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred. . . (3) adultery; (4) fraudulent contract; (5) wilful desertion for one year with total neglect of duty; (6) seven years' absence, during all of which period the absent party has not been heard from; (7) habitual intemperance; (8) intolerable cruelty; (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year; (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.” CONN. GEN. STAT. §46b-40(c) (2005).

STATUTES:

- CONN. GEN. STAT. (2005).
§46b-40(c). Fault and no fault grounds for divorce or legal separation

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Turgeon v. Turgeon, 190 Conn. 269, 278, 460 A.2d 1260 (1983). “Although, because of their clandestine nature, adulterous acts are usually proved by circumstantial evidence . . . the circumstances must be such as to lead the guarded discretion of a reasonable and just person to the conclusion of guilt.”
- Posado v. Posado, 179 Conn. 568, 573, 427 A.2d 406 (1980). “In the text of the statutes, the criteria relating to the ‘the causes for the . . . dissolution of marriage’ is only one item in an extensive list of criteria that the trial court is directed to take into account.”
- Kinsley v. Kinsley, 110 Conn. 695, 695-696 (1929). “The cumulative effect of the defendant's acts and conduct as recited in the report of the committee may well have been held to have been so cruel as to have destroyed the public and personal objects of matrimony, past rehabilitation, and rendered a

continuance of the marriage relation unbearable - beyond reasonable endurance - and therefore intolerable within the meaning we have given it in the ground for divorce, 'intolerable cruelty.'"

- Alden v. Alden, 21 Conn. Sup. 301, 304, 154 A.2d 522 (1959). "The desertion for three years which constitutes a ground for divorce under our statute involves the coexistence of the following four conditions: (1) cessation from cohabitation, (2) an intention on the part of the absenting party not to resume it, (3) the absence of the other party's consent, and (4) the absence of justification."
- Vendetto v. Vendetto, 115 Conn. 303, 305, 161 A. 392 (1932). "The plaintiff's ground of divorce was the fraud of the defendant in entering into the marriage contract knowing her epileptic condition, and yet, in order to induce marriage, concealing the fact from the plaintiff."

**WEST KEY
NUMBERS:**

- *Divorce* # 12-38. Grounds

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Fault*
- DOWLING'S DIGEST: *Dissolution of Marriage* §§ 6-10

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 35-128. Fault grounds
- 27A C.J.S. *Divorce* (1986).
§§ 22-40. Cruelty
§§ 41-52. Desertion
§§ 53-59. Personal indignities
§§ 60-70. Other particular grounds

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
Chapter 15. Dissolution of marriage in general
§ 15.6 Adultery
§ 15.7. Fraudulent contract
§ 15.8. Wilful desertion for one year
§ 15.9. Continuous absence for seven years
§ 15.10. Habitual intemperance
§ 15.11. Intolerable cruelty
§ 15.12. Imprisonment; life sentence or commission of infamous crime
§ 15.13. Five-year confinement for mental illness
§ 15.14. Defenses

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Table 11 Fault and Financial Awards

Assignment of property	<p>“As stated in <u>Christoni v. Christoni</u>, 156 Conn. 628, 629, 239 A.2d 533, on the issue of choosing alternative grounds for granting a divorce: ‘Where more than one ground for a divorce is claimed and one alleged ground is proved, it is immaterial whether or not the additional statutory ground or grounds may also exist.’ The fault of the parties in causing a marital dissolution is material, however, to the issue of an assignment of property ancillary to the marital dissolution.” <u>Hollingsworth v. Hollingsworth</u>, 180 Conn. 212, 214 fn. 2, 429 A.2d 463 (1980).</p>
Irretrievable breakdown	<p>“The contention . . . that a determination of irretrievable breakdown precludes the court from considering the causes of the dissolution in making financial awards is erroneous.” <u>Sweet v. Sweet</u>, 190 Conn. 657, 660, 462 A.2d 1031(1983).</p>
Factors	<p>“In the text of the statutes, the criteria relating to the ‘the causes for the . . . dissolution of marriage’ is only one item in an extensive list of criteria that the trial court is directed to take into account.” <u>Posado v. Posado</u>, 179 Conn. 568, 573, 427 A.2d 406 (1980).</p>
Contribution	<p>“We disagree with the plaintiff’s claim that the trial court, in making its award of alimony and its assignment of property, gave inordinate weight to the cause of the breakdown. There is no provision in the governing statutes requiring that awards of alimony be distributed equally between the parties The trial court structured the division of property in a way which returned to the defendant his contribution to the marriage.” <u>Carter v. Carter</u>, 8 Conn. App., 356, 359, 512 A.2d 979 (1986).</p>
Misconduct	<p>“While alimony, in whatever form, or an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing, a spouse whose conduct has contributed substantially to the breakdown of the marriage should not expect to receive financial kudos for his or her misconduct. Moreover, in considering the gravity of such misconduct it is entirely proper for the court to assess the impact of the errant spouse’s conduct on the other spouse. Because in making its assignment of property the trial court had a reasonable basis for its disposition we see no reason for disturbing the result.” <u>Robinson v. Robinson</u>, 187 Conn. 70, 72, 444 A.2d 234 (1982).</p>

Section 4.1.2a

Adultery

A Guide to Resources in the Law Library

- SCOPE:**
- Bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of adultery.
- DEFINITIONS:**
- **Adultery** “means voluntary sexual intercourse between a married person and a person other than such person's spouse.” CONN. GEN. STAT. § 46b-40(f) (2005).
- STATUTES:**
- CONN. GEN. STAT. (2005)
 - § 46b-40(c). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . .
(3) adultery”
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
 - Chapter 25. **Procedure in Family Matters**
 - § 25-2. Complaints for dissolution of marriage, legal separation, or annulment
 - § 25-7. Pleadings in general; Amendments to complaint or application
 - § 25-8. —Amendment; New grounds for dissolution of marriage
 - § 25-9. —Answer, cross complaint, claims for relief by defendant
 - § 25-10. —Answer to cross complaint
- CASES:**
- Wight v. Wight, no. 0551734 (Ct. Super. Ct., J.D. New London, October 20, 2000) 2000 WL 1705741 (Conn. Super. 2000). “Adultery as a ground for dissolution under C.G.S. § 46b-40 requires proof that the other spouse has engaged in extramarital sexual relations citing *Brodsky v. Brodsky*, 153 Conn. 299 (1966). The adulterous relationship must be established by a fair preponderance of evidence, again citing *Brodsky*.”
 - Brodsky v. Brodsky, 153 Conn. 299, 300-301, 216 A.2d 180 (1966). “Adultery, as a ground for divorce or legal separation under General Statutes 46-13 or 46-29, requires proof that the other spouse has engaged in extramarital sexual relations. 27A C.J.S., Divorce, 21; 17 Am.Jur., Divorce and Separation, 34; see *Schilcher v. Schilcher*, 124 Conn. 445, 200 A. 351; *Torlonia v. Torlonia*, 108 Conn. 292, 302, 142 A. 843; *Dennis v. Dennis*, 68 Conn. 186, 195, 36 A. 34; *Trubee v. Trubee*, 41 Conn. 36, 40. A principal claim of error in the present case is that the plaintiff failed to prove that the defendant committed adultery with Barbara Jean Miles. Although the proof will be circumstantial in nearly every case, the plaintiff must nonetheless prove the adulterous relationship by a fair preponderance of the evidence. *Zeiner v. Zeiner*, 120 Conn. 161, 165, 179 A. 644. The circumstances must be such as to lead the guarded discretion of a reasonable and just man to the conclusion of guilt. *Neff v. Neff*, 96 Conn. 273, 275, 114 A. 126.”

- Charpentier v. Charpentier, 206 Conn. 150, 154, 536 A.2d 948 (1988). "The fact that a custodial parent normally bears the principal responsibility for raising and educating children, whose needs demand primary consideration, may well justify a division of family assets that would otherwise appear disproportionate and unfair. There is no basis whatever, therefore, for the claim raised by the defendant of discrimination because of sexual preference."
- Turgeon v. Turgeon, 190 Conn. 269, 278, 460 A.2d 1260 (1983). "Although, because of their clandestine nature, adulterous acts are usually proved by circumstantial evidence . . . the circumstances must be such as to lead the guarded discretion of a reasonable and just person to the conclusion of guilt . . . The adulterous relationship must be established by a fair preponderance of the evidence."
- Neff v. Neff, 96 Conn. 273, 276, 114 A. 126 (1921). "in weighing the evidence of adultery, the court should exercise great care to see that it is not imposed upon through the intense interest of the parties to color the facts; it should not see evil where the circumstances may reasonably lend themselves to an innocent interpretation, nor on the other hand, should it refuse to reach that conclusion which the sound and unprejudiced judgment should lead to."
- Beede v. Beede, 186 Conn. 191, 196, 440 A.2d 283 (1982). "There is nothing in the record to support the defendant's claim that the court acted punitively in making its award by focusing on the defendant's adultery as the cause of the dissolution."

**WEST KEY
NUMBERS:**

- *Divorce* #26. Adultery

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Adultery*
- DOWLING'S DIGEST: *Dissolution of Marriage* § 10

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 59. Adultery, generally
§ 60. Requirement of intent
- 27A C.J.S. *Divorce* (1986).
§ 60. Adultery
- *Adultery*, 1 POF 237 (1959).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15 Dissolution of marriage in general
§ 15.6. Adultery

LAW REVIEWS:

- Victor M. Gordon, *Adultery As A Ground For Divorce In Connecticut*, 23 CONNECTICUT BAR JOURNAL 315 (1949).

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Section 4.1.2b

Fraudulent Contract

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of fraudulent contract.

DEFINITIONS:

- **Fraudulent contract:** "There must be a deception in respect to some fact whose existence or nonexistence may affect in some certain way the very essence of the marriage relation, resulting in a lawful marriage which practically operates as a fraud upon the deceived spouse; and the existence or nonexistence of the fact thus concealed or misrepresented must operate, as between parties to the marriage, to prevent some essential purpose of marriage and work a practical destruction of that relation." Gould v. Gould, 78 Conn. 242, 261 (1905).
- "In Connecticut, by statute . . . fraudulent contract is a ground for divorce. This ground probably embraces some situations which, at least in jurisdictions not having such a ground of divorce, could also support an action for annulment." Perlstein v. Perlstein, 152 Conn. 152, 161, 204 A.2d 909 (1964).
- "All the grounds of divorce specified, except fraudulent contract, are of such a nature that they can come into existence only after the marriage. While fraudulent conduct of a certain kind will render a marriage voidable, such fraud differs from that which vitiates ordinary contracts in that the party defrauded may not at his own election avoid the marriage, but it is held to be voidable only by a decree of the court." Davis v. Davis, 119 Conn. 194, 196, 175 A. 574 (1934).

STATUTES:

- CONN. GEN. STAT. (2005).
§ 46b-40(c). Fault and no fault grounds for divorce or legal separation.
"A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . .
(4) fraudulent contract . . ."

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Dasilva v. Dasilva, No. 02 0470290 (Ct. Super. Ct., J.D. New Haven, Apr. 21, 2003) 2003 WL 21037549 (Conn. Super. 2003). "What amounts to

‘fraudulent contract,’ as that term is used in our divorce statute, and to that or other equivalent language, as used in the law, written or unwritten, elsewhere, to express a recognized condition justifying the annulment or dissolution of a marriage, has been much discussed, but no satisfactory and comprehensive definition applicable to all situations has been arrived at or attempted to be arrived at. *Gould v. Gould*, 78 Conn. 242 (1905).

It is certain, however, that wherever there is a fraud on the part of one of the parties amounting to ‘a fraud in the essentialia of the marriage relation,’ or as in *Gould v. Gould*, supra, page 261-62, “whenever there is a ‘deception in respect to some fact whose existence or nonexistence may affect in some certain way the very essence of the marriage relation, resulting in a lawful marriage which practically operates as a fraud upon the deceived spouse, and the existence or nonexistence of the fact thus concealed or misrepresented must operate, as between the parties to the marriage, to prevent some essential purpose of marriage and work a practical destruction of that relation.’”

- *Tuccio v. Tuccio*, 18 Conn. Supp. 215 (1953). “. . . if the marriage was induced by fraudulent contract or representation of the epileptic as to his condition, it may be grounds for divorce on the statutory ground of fraudulent contract.”
- *Gould v. Gould*, 78 Conn. 242, 250, 61 Atl. 604 (1930). “Such a fraud is accomplished whenever a person enters into that contract knowing that he is incapable of sexual intercourse, and yet, in order to induce marriage, designedly and deceitfully concealing that fact from the other party, who is ignorant of it and has no reason to suppose it to exist.”
- *McCurry v. McCurry*, 126 Conn. 175, 177-178, 10 A.2d 365 (1939). “The referee refused specifically to find that the defendant entered into the marriage with the concealed intent not to consummate it or to have children and found that the plaintiff had failed to prove that allegation of the complaint. The existence of such an intent would be a question of fact; and we cannot hold that no other conclusion was reasonably possible than that she had that intent when she was married.”
- *Gordon v. Gordon*, 11 Conn. Supp. 302, 302 (1942). “In order to make out fraudulent contract as a ground for divorce the facts misrepresented or concealed must be such as to go to the very essence of the marriage.”
- *Horowitz v. Horowitz*, 6 Conn. Supp. 14, 16 (1938). “The false representation of a woman that she is pregnant by the man who is thereby induced to marry her is not the representation of a fact which if it does not exist prevents some essential purpose of marriage and works a practical destruction of the relationship.”
- *Wetstine v. Wetstine*, 114 Conn. 7, 12, 157 A. 418 (1931). “Misrepresentation by the defendant as to her age, her name, and her nationality would not furnish a sufficient basis to dissolve a consummated marriage on that ground”
- *Lyman v. Lyman*, 90 Conn. 399, 403, 97 A. 312 (1916). “In consonance with this principle, the courts are practically agreed in holding that antenuptial pregnancy by another man, if concealed by the wife from the husband, who was himself innocent of improper relations with her, is a fraud upon him justifying a divorce or annulment of the marriage, as the appropriate remedy in the jurisdiction may be.”

**WEST KEY
NUMBERS:**

DIGESTS:

- *Divorce* #18. Grounds existing at time of marriage. Fraud or duress in procuring marriage
- CONNECTICUT FAMILY LAW CITATIONS: *Fault*

- DOWLING'S CONNECTICUT DIGEST: *Dissolution of marriage* § 7

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 Fraud
 § 113. Generally
 § 114. Premarital unchastity
 § 115. Pregnancy at time of marriage
 § 116. —Effect of husband's guilt or knowledge
 Misrepresentation or concealment
 § 117. Birth or parentage of child
 § 118. Prior marriage
 § 119. Insanity or mental affliction
- 27A C.J.S. *Divorce* (1986).
 § 62. Fraud and duress
- Annotation, *What Constitutes Impotency As Ground For Divorce*, 65 ALR2d 776 (1959).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
 Chapter 15 Dissolution of marriage in general
 § 15.7. Fraudulent contract

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Section 4.1.2c

Wilful Desertion

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of wilful desertion for one year with total neglect of duty.

DEFINITIONS:

- **Wilful desertion:** “the wilful absenting of one party to the marriage contract from the society of the other, coupled with the intention on the part of the absenting party to live apart, in spite of the wish of the other, and not to return to cohabitation.” Casale v. Casale, 138 Conn. 490, 492, 86 A.2d 568 (1952).
- “The elements of a cause of action on the grounds of desertion are (1) cessation from cohabitation; (2) an intention on the part of the absenting party not to resume it; (3) the absence of the other party’s consent; and (4) absence of justification.” Gannon v. Gannon, 130 Conn. 449, 450, 35 A.2d 204 (1943).
- "When our legislature, in 1843, adopted as grounds of divorce *a vinculo*, 'habitual intemperance' and 'intolerable cruelty,' it used these words with their ordinary meaning, but with special reference to what had been since 1639 our settled policy in respect to divorce; i.e., marriage is a life status and should never be dissolved, unless one of the parties is guilty of conduct which in itself is a practical annulling and repudiation of the marriage covenant. **Wilful desertion for such a length of time as the statute says shall conclusively prove a permanent abandonment and repudiation of all marital rights and duties, had been a ground for divorce.** Following this analogy the legislature, in 1843, made grounds of divorce: intemperance so long continued that the fixed habit renders the party incapable of performing the duties of the marriage relation; and cruelty of such a nature as to be intolerable, and to render a continuance of the relation by the suffering victim impracticable." Morehouse v. Morehouse, 70 Conn. 420, 426-427, 39 A. 516 (1898). [emphasis added]

STATUTES:

- CONN. GEN. STAT. (2005).
 - § 46b-40. **Grounds for dissolution of marriage; legal separation; annulment**
 - (c). Fault and no fault grounds for divorce or legal separation. “A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (5) wilful desertion for one year with total neglect of duty”
 - (e). “In an action for dissolution of a marriage or a legal separation on the ground of wilful desertion for one year, with total neglect of duty, the furnishing of financial support shall not disprove total neglect of duty, in the absence of other evidence.”

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Toth v. Toth, 23 Conn. Supp. 161, 178 A.2d 542 (1962). “there is no question of the validity of the ground of constructive desertion where the facts of the same fit in with the definition of wilful desertion . . . found in Connecticut cases in construing our statutes.”
- Schick v. Schick, 17 Conn. Supp. 232, 233 (1951). “Desertion requires not only separation for the requisite period of three years but also an intent, persisting throughout that entire period, not to resume the marriage relationship. Separation alone is not the equivalent of desertion.”
- Baccash v. Baccash, 11 Conn. Supp. 387, 389 (1942). “In order to justify a husband in leaving his wife there must be such improper conduct on her part as would defeat the essential purpose of the marriage relation or the circumstances must be such that he has good reason to believe that cohabitation cannot longer be continued with due regard to this health, or safety, or that the conditions of his marital life have become intolerable.”
- McCurry v. McCurry, 126 Conn. 175, 178, 10 A.2d 365 (1940). “By the weight of authority refusal of marital intercourse is not in itself desertion, but becomes so only when coupled with a substantial abandonment of other marital duties.”
- Holden v. Holden, 4 Conn. Sup. 499, 499 (1937). “The question to be answered by this memorandum is whether the fact that the defendant voluntarily contributed to his wife's support from the time of his departure from their home to the date of the trial of this action is a bar to a decree in favor of the plaintiff wife on the ground of desertion.”

WEST KEY NUMBERS:

- *Divorce* #37. Desertion or absence

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Fault*
- DOWLING’S CONNECTICUT DIGEST: Dissolution of Marriage § 8

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
Desertion
§§ 61-73. In general
Justification for separation; constructive desertion
§§ 74-76. In general
§§ 77-85. Acts or conduct constituting constructive desertion
§§ 86-92. Offer of reconciliation
- 27A C.J.S. *Divorce* (1986).
§§ 41-52. Desertion
- Annotation, *Written Separation Agreement As Bar To Divorce On Grounds Of Desertion*, 34 ALR2d 954 (1954).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).

Chapter 15 Dissolution of marriage in general
§ 15.8. Wilful desertion for one year

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Table 12 Constructive desertion

Constructive Desertion	
Connecticut Superior Court	<p>“In other jurisdictions, it is almost universally held that conduct on the part of one spouse which reasonably forces the other spouse to leave the home constitutes desertion by the first spouse as a ground for divorce, and this is generally held to be true whether the misconduct was indulged in with the specific intent of forcing the other spouse to leave the home or not.” <u>Finn v. Finn</u>, 13 Conn. Supp. 169, 170 (1944)</p> <p>“It must therefore be concluded that in this State, as well as in other jurisdictions, constructive desertion is desertion within the meaning of that term as used in the divorce statute and that where a wife separates from her husband for adequate cause and he, for a period of three years thereafter, shows no indication of a purpose to change the course of conduct which has justified the separation, then she is entitled to a divorce on the ground of desertion.” Ibid., pp. 170-171.</p>
Connecticut Supreme Court	<p>“According to the rule as it has been stated in jurisdictions where it has been adopted, where a spouse intentionally brings the cohabitation to an end by misconduct which renders the continuance of marital relations so unbearable that the other leaves the family home, the former is the deserter and the latter may obtain a divorce on that ground. <u>Lindquist v. Lindquist</u>, 137 Conn. 165, 169, 75 A.2d 397 (1950).</p> <p>“Where the rule has been adopted, serious misconduct upon the part of the offending spouse is held essential to its application. In no event could misconduct of an offending husband be held to afford a basis for a decree on the ground of constructive desertion unless it was so improper as to defeat the essential purposes of the marriage relation or give the wife good reason to believe that cohabitation could no longer be continued with due regard to her health or safety or otherwise render continued cohabitation intolerable. Ibid.</p>

Section 4.1.2d

Seven Years' Absence

A Guide to Resources in the Law Library

STATUTES:

- CONN. GEN. STAT. (2005).
§ 46b-40(c). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (6) seven years' absence, during all of which period the absent part has not been heard from”

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Cikora v. Cikora, 133 Conn. 456, 457, 52 A.2d 310 (1947). “This action for divorce was brought on two grounds: desertion, and seven years' absence, during all of which period the absent party had not been heard from.”

Even where a defendant has gone to parts unknown, very likely outside the State, it may well be that publication in the place of the former marital residence is the form of notice most apt to bring the pendency of the action to his attention, because of the likelihood that there will be relatives or friends there who have means of communicating information to him directly or indirectly. The trial court was in error in striking the case from the docket on the ground that it was without jurisdiction to try the case.” p. 462

WEST KEY NUMBERS:

- Divorce #37. *Desertion or absence*

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Fault*
- DOWLING'S CONNECTICUT DIGEST: Dissolution of Marriage #7

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15. Dissolution of marriage in general
§ 15.9. Continuous absence for seven years

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Habitual Intemperance

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon grounds of habitual intemperance.

DEFINITIONS:

- "When our legislature, in 1843, adopted as grounds of divorce *a vinculo*, '**habitual intemperance**' and 'intolerable cruelty,' it used these words with their ordinary meaning, but with special reference to what had been since 1639 our settled policy in respect to divorce; i.e., marriage is a life status and should never be dissolved, unless one of the parties is guilty of conduct which in itself is a practical annulling and repudiation of the marriage covenant. Wilful desertion for such a length of time as the statute says shall conclusively prove a permanent abandonment and repudiation of all marital rights and duties, had been a ground for divorce. Following this analogy the legislature, in 1843, made grounds of divorce: **intemperance so long continued that the fixed habit renders the party incapable of performing the duties of the marriage relation**; and cruelty of such a nature as to be intolerable, and to render a continuance of the relation by the suffering victim impracticable." Morehouse v. Morehouse, 70 Conn. 420, 426-427, 39 A. 516 (1898). [emphasis added]

STATUTES:

- CONN. GEN. STAT. (2005).
§46b-40(c). Fault and no fault grounds for divorce or legal separation.
"A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . .
(7) habitual intemperance"

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Dyke v. Dyke, No. FA 01 0187101S (Conn. Super. Ct., J.D. Stamford, Feb. 10, 2005). "Very little was offered by either party regarding the imbibing habits of the defendant in his use of alcoholic beverage. There was no claim that it interfered with his ability to work as was required by 'habitual intemperance'" (Sec. 46b-40(c)(7))."

- Welch v. Welch, No. FA 00-0072505 (Ct. Super. J.D. Tolland, May 17, 2002), 2002 WL 1332028 (Conn. Super. 2002). "The case law regarding what facts the court must find in order to conclude that a divorce should be granted on the grounds of habitual intemperance are sparse. However, in *Dennis v. Dennis*, 68 Conn. 186, 192-194 (1896), the court held that in order to establish habitual intemperance as a grounds for a divorce, it must be established that the habit' was so gross or so long continued as to produce suffering or want in the family. Excessive indulgence in alcohol is not sufficient."
- Fagan v. Fagan, 131 Conn. 688, 689, 42 A.2d 41 (1945). "A detailed rehearsal of the marital difficulties of these parties would serve no useful purpose. The trial court concluded that the plaintiff was both intolerably cruel and habitually intemperate to the point that the public and personal objects of matrimony have been destroyed beyond rehabilitation, and that the custody of the minor child of the marriage should be awarded to the defendant."
- Wilhelm v. Wilhelm, 13 Conn. Sup. 270, 271 (1945). "He also frequently indulged to excess in alcoholic liquor. This indulgence, however, was not such as to cause any want to the family or suffering, except as it was reflected in the intolerable cruelty. For that reason his habitual intemperance was not such as to provide a ground for divorce independently of the intolerable cruelty."
- Hickey v. Hickey, 8 Conn. Supp. 445, 446 (1940). "In order to constitute a ground for divorce habitual intemperance must be such that it produces at some substantial suffering and does material harm to the marriage relationship."
- Purcell v. Purcell, 101 Conn. 422, 425 (1924). "The subordinate facts found as to intoxication, as set forth in the statement of facts, do not disclose that the defendant's use of intoxicants was so gross as to produce want or suffering in the family, either objective or subjective, to a degree which could not reasonably be borne, or which disqualified the defendant from attending to his business; under these circumstances, the conclusion that the subordinate facts did not establish habitual intemperance, cannot be held to be illegal or illogical"
- Dennis v. Dennis, 68 Conn. 186, 192 (1896). "Habitual intemperance as a cause for which a divorce might be granted, was first named in this State by a statute enacted in 1843, where it was coupled with intolerable cruelty. Precisely what constitutes intemperance within the meaning of that statute, it is not easy to easy to define. It may however be safely assumed that the purpose of the Act was not primarily to promote temperance or to reform the offender, but to preserve the peace, comfort, safety, happiness and prosperity, of the non-offending party, and of the family of which they are together the members and parents."

**WEST KEY
NUMBERS:**

- *Divorce* #22. Habitual drunkenness
#27(15). Cruelty. Habitual drunkenness or use of opiates or narcotics as cruelty

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Fault*
- DOWLING'S CONNECTICUT DIGEST: *Dissolution of Marriage* § 7

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 96-100. Habitual drunkenness or drug addition
- 27A C.J.S. *Divorce* (1986).
§ 39. Habitual intemperance or use of narcotics

§ 57. Personal indignities. Particular acts, conduct and condition.
Drunkenness and use of drugs

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, 7CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15 Dissolution of marriage in general
§ 15.10. Habitual intemperance

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Section 4.1.2f

Intolerable Cruelty

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of intolerable cruelty.

DEFINITIONS:

- **Intolerable cruelty** “The term ‘intolerable cruelty’ as used in our statute involves two distinct elements, and the acts which are claimed to constitute it must be, either singly or in combination, not only cruel but intolerable.” Swist v. Swist, 107 Conn. 484, 489 (1928).
- Nowak v. Nowak, 23 Conn. Sup. 495, 497, 185 A.2d 83 (1962).
“Incompatibility of personalities is not and has never been a ground for divorce in Connecticut. Under our law, married persons are expected to accept the ordinary vicissitudes of marriage caused by unwise mating, unhappy situations, unruly tempers and common quarrels or marital wranglings. To constitute intolerable cruelty, the consequences must be serious.”
- “When our legislature, in 1843, adopted as grounds of divorce *a vinculo*, ‘habitual intemperance’ and ‘**intolerable cruelty**,’ it used these words with their ordinary meaning, but with special reference to what had been since 1639 our settled policy in respect to divorce; i.e., marriage is a life status and should never be dissolved, unless one of the parties is guilty of conduct which in itself is a practical annulling and repudiation of the marriage covenant. Wilful desertion for such a length of time as the statute says shall conclusively prove a permanent abandonment and repudiation of all marital rights and duties, had been a ground for divorce. Following this analogy the legislature, in 1843, made grounds of divorce: intemperance so long continued that the fixed habit renders the party incapable of performing the duties of the marriage relation; and **cruelty of such a nature as to be intolerable, and to render a continuance of the relation by the suffering victim impracticable.**” Morehouse v. Morehouse, 70 Conn. 420, 426-427, 39 A. 516 (1898). [emphasis added]

STATUTES:

- CONN. GEN. STAT. (2005).
§46b-40(c). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . .
(8) intolerable cruelty . . .”

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or

application

§ 25-8. —Amendment; New grounds for dissolution of marriage

§ 25-9. —Answer, cross complaint, claims for relief by defendant

§ 25-10. —Answer to cross complaint

CASES:

- Evans v. Taylor, 67 Conn. App. 108, 115, 786 A.2d 525 (2001). "In its memorandum of decision, the court noted, on the basis of the testimony of the parties, that the marriage of the parties was troubled from the start and that each party believed that he or she was mistreated by the other. It also noted that although the defendant claimed that the plaintiff's treatment of her over the course of their seven year marriage was intolerable, she tolerated it by not moving from the marital home until her husband filed an action for dissolution, despite the fact that she had the financial means to do so. Finally, the court noted that some of the difficulties in what was a stormy marriage, arose from the verbal abuse by the defendant toward the plaintiff. On the basis of those observations, the court stated that the defendant failed to prove her claim of intolerable cruelty."
- Garrison v. Garrison, 190 Conn. 173, 180-181, 460 A.2d 945 (1983). "The trial court's finding that the behavior of the defendant constituted a continuing course of conduct is clearly supported by the record. In cases like the one before us, it would be archaic and absurd to hold that the plaintiff was under an obligation to be beaten more often in order to establish a continuing course of conduct. The facts found indicate that the defendant's attitude toward the plaintiff had become indifferent and uncaring for months before the striking incidents. He was at times openly hostile and cruel, as when he confronted the plaintiff with his own adultery. He had struck her twice, for no apparent reason. In this atmosphere, a person in the plaintiff's position could reasonably believe that the physical abuse would either continue or escalate. It would thereafter be reasonable to consider that the continuation of the marital relationship would be unbearable. The trial court did not err, but reasonably concluded that the defendant's actions constituted intolerable cruelty."
- Richards v. Richards, 153 Conn. 407, 409, 216 A.2d 822 (1966). "Whether intolerable cruelty exists or not in a particular case is ordinarily a conclusion of fact for the trier to draw. Where not so drawn, it is only in exceptionally aggravated cases, where the mere statement of the evidential facts demonstrates the intolerable character of the defendant's alleged cruelty, that this court is warranted in treating that fact as established."
- Bloomfield v. Bloomfield, 144 Conn. 568, 568-69, 135 A.2d 736 (1957). "There must be not only proof of acts of cruelty on the part of the defendant but also proof that in their cumulative effect upon the plaintiff they are intolerable in the sense of rendering the continuance of marital relation unbearable."
- Nowak v. Nowak, 23 Conn. Supp. 495, 498, 185 A.2d 83 (1962). "Our courts have never adopted the policy, which some jurisdictions have followed, 'of comparative guilt.'"
- Vanguilder v. Vanguilder, 100 Conn. 1, 3, 122 A. 719 (1923). "It is enough to repeat that, as the phrase imports, intolerable cruelty has a subjective as well as an objective significance. There must not only be proof of acts of cruelty has on the part of the defendant, but proof that in their cumulative effect upon the plaintiff they are intolerable in the sense of rendering the continuance of the marital relation unbearable by him."

**WEST KEY
NUMBERS:**

- *Divorce #27. Cruelty*

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Cruelty*

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 35-58. Cruelty
- 27A C.J.S. *Divorce* (1986).
§§ 22-40. Cruelty
- *Mental Cruelty*, 21 POF 191 (1968).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15. Dissolution of marriage in general
§ 15.11. Intolerable cruelty

LAW REVIEWS:

- Victor M. Gordon, *Intolerable Cruelty As A Ground For Divorce In Connecticut*, 21 CONNECTICUT BAR JOURNAL 64 (1947).

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Section 4.1.2g

Imprisonment / Infamous Crime

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon grounds of sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year.

DEFINITIONS:

- “. . . the three essentials to a divorce upon the grounds this ground are: (1) the commission by the defendant of an infamous crime, (2) involving a violation of conjugal duty, and (3) punishable by imprisonment in the state prison.” Swanson v. Swanson, 128 Conn. 128, 129, 20 A.2d 617 (1941).

STATUTES:

- CONN. GEN. STAT. (2005).
§46b-40(c). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . .
(9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year . . .”

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Cugini v. Cugini, 13 Conn. App. 632, 636, 538 A.2d 1060 (1988). “The defendant also claims an abuse of discretion by the trial court in permitting an amendment to the complaint to allege as an additional ground for dissolution that he had been convicted of an infamous crime. This is one of the grounds upon which dissolution may be sought; General Statutes 46b-40(c)(9); and, in any event, it was not the ground upon which dissolution was granted in this case.”

- Sweet v. Sweet, 21 Conn. Supp. 198, 202, 151 A.2d 350 (1957). "From the broad range of the crime as above described, it is apparent that while there might be acts which would violate the statute and at the same time be a violation of conjugal duty, it is, nevertheless, equally true that there might be many violations of the statute which would not amount to a violation of conjugal duty. In fact, acts which might impair the morals of a child as alleged in the information here involved would not necessarily be acts in violation of conjugal duty."
- Donovan v. Donovan, 14 Conn. Supp. 429, 430 (1947). ". . . the conviction of an indecent assault upon a minor female is conviction of an infamous crime involving breaching of conjugal duty."
- Swanson v. Swanson, 128 Conn. 128, 130-131, 20 A.2d 617 (1941). "It is our conclusion that the defendant's conviction of assault with intent to commit rape established the commission by him of an infamous crime involving a violation of conjugal duty and punishable by imprisonment in the state prison"

**WEST KEY
NUMBER:**

- *Divorce* #24. Person infirmities and conditins arising after marriage. Conviction and imprisonment for crime

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 29. Necessity of voluntariness. Effect of imprisonment
§§ 93-95. Conviction of crime
- 27A C.J.S. *Divorce* § 61 (1986).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15 Dissolution of marriage in general
§ 15.12. Imprisonment; life sentence or commission of infamous crime

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Confinement/ Mental Illness

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon grounds of legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.

STATUTES:

- CONN. GEN. STAT. (2005).
§ 46b-40(c). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . .
(10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.”

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Parker v. Parker, 16 Conn. Supp. 128, 130 (1949). “There has been no actual confinement of the defendant for five years prior to February 13, 1948, when the action was commenced.”

DIGESTS:

- West Key Numbers: Divorce #26

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 124-128. Insanity or mental incapacity
- 27A C.J.S. *Divorce* § 68 (1986). Insanity or other mental incompetency

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15 Dissolution of marriage in general
§ 15.13. Five-Year confinement for mental illness

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Section 4.1.3

Multiple Grounds

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon multiple grounds.

STATUTES:

- CONN. GEN. STAT. (2005).
§ 46b-40(c). Fault and no fault grounds for divorce or legal separation

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaints for dissolution of marriage, legal separation, or annulment
§ 25-7. Pleadings in general; Amendments to complaint or application
§ 25-8. —Amendment; New grounds for dissolution of marriage
§ 25-9. —Answer, cross complaint, claims for relief by defendant
§ 25-10. —Answer to cross complaint

CASES:

- Sweet v. Sweet, 190 Conn. 657, 660, 462 A.2d 1031(1983). "The contention . . . that a determination of irretrievable breakdown precludes the court from considering the causes of the dissolution in making financial awards is erroneous."
- Gluck v. Gluck, 181 Conn. 225, 227, 435 A.2d 35 (1980). "Next, the defendant asserts that General Statutes 46b-40 (c), to the extent that it authorizes the dissolution of a marriage if the marriage has broken down irretrievably . . . nullifies the other grounds for dissolution The gravamen of the unparticularized claim that irretrievable breakdown nullifies the other grounds for dissolution set forth in 46b-40 (c) and prevents defenses appears to be that the legislature has sanctioned divorce on demand. This claim too was rejected in *Joy v. Joy*"
- Joy v. Joy, 178 Conn. 254, 255-256, 423 A.2d 895 (1979). "The absence of objective guidelines does not mean an abdication of judicial function, nor does it signal, as the defendant argues, that a court determining whether a marriage has in fact irretrievably broken down is acting purely ministerially or is granting a divorce 'upon demand.' It does, however, sustain the trial court's conclusion that the defendant's decision to rearrange his business ventures after the initiation of divorce proceedings does not necessarily repair the rupture in the marital relationship that had previously occurred."
- Edge v. Commissioner Of Welfare, 34 Conn. Sup. 284, 286, 388 A.2d 1193 (1978). " . . . although fault need not be established in dissolution of marriage actions, fault can still be an element to be raised in dissolution actions for purposes of establishing the support obligation of either spouse to the other."
- Christoni v. Christoni, 156 Conn. 628, 629, 239 A.2d 533 (1968). "Where more than one ground for a divorce is claimed and one alleged ground is

proved, it is immaterial whether or not the additional statutory ground or grounds may also exist.”

**WEST KEY
NUMBERS:**

- *Divorce* # 12 - 38. Grounds

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Fault*

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15. Dissolution of marriage in general
§ 15.4. Other grounds for dissolution
§ 15.14. Defenses

COMPILER:

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06424. (860) 343-6560. Email: lawrence.cheeseman@jud.state.ct.us

Section 4.1.4

Defenses

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to defenses to grounds for dissolution of marriage (divorce).

DEFINITIONS:

- "The defenses of recrimination and condonation have been abolished." Venuti v. Venuti, 185 Conn. 156, 157, 440 A.2d 878 (1981).
- **Condonation**: "the principle relied upon means only that an aggrieved spouse actually forgives and forgets." Toolan v. Toolan, 15 Conn. Sup. 277, 277 (1948).
- **Recrimination** "is generally defined as a rule or doctrine which precludes one spouse from obtaining a divorce from the other, where the spouse seeking the divorce has himself or herself been guilty of conduct which would entitle the opposite spouse to a divorce." Courson v. Courson, 117 A.2d 850, 851, 208 Md. 171 (1955).

STATUTES:

- CONN. GEN. STAT. (2005).
 - § 46b-40(c). Fault and no fault grounds for divorce or legal separation
 - § 46b-52. Recrimination and condonation abolished.
 - "The defenses of recrimination and condonation to any action for dissolution of marriage or legal separation are abolished."

COURT RULES:

- CONN. PRACTICE BOOK (2005).
 - Chapter 25. **Procedure in Family Matters**

CASES:

- Dervin v. Dervin, 27 Conn. Supp. 459, 462 (1968). "That a person having property is incapable of managing his affairs and has a conservator appointed to do so in their behalf does not warrant a finding or interpretation in and of itself that such person is insane. What was said in the Dochelli [v. Dochelli] case, supra, [125 Conn. 468,] 470, applies with even greater force: 'This does not connote insanity in the narrower sense and will not avail as a defense.'"

WEST KEY NUMBERS

- DIVORCE
 - # 38.5 In general
 - # 39 Nonexistence or invalidity of marriage
 - # 40 Agreement for separation
 - # 41 Mistake of law
 - # 42 Mistake of fact
 - # 43 Insanity
 - # 44 Drunkenness
 - # 45 Connivance
 - # 46 Provocation
 - # 47 Condonation
 - # 52 Recrimination

- # 56 Collusion
- # 57 Courts invested with jurisdiction
- # 58 Jurisdiction of cause of action
- # 65. Jurisdiction of the person

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 129-195. Defenses
- 27A C.J.S. *Divorce* (1986).
§§ 71-90. Defenses: circumstances precluding divorce
- David P. Chapus, Annotation, *Insanity As Defense To Divorce Or Separation Suit—Post 1950 Cases*, 67 ALR4th 277 (1989).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, 7 CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 15 Dissolution of marriage in general
§ 15.2. Breakdown of marriage relationship
§ 15.14. Defenses

PERIODICALS:

- Edward Y. O'Connell, Comment, *Recrimination In Connecticut*, 27 CONN. B.J. 376 (1953).

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Section 4.2.0

Procedures

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to procedures in a dissolution of marriage (divorce) commenced after October 1, 1997

DEFINITIONS:

- **Jurisdiction:** “The Superior Court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation.” CONN. GEN. STAT. § 46b-42 (2001).

STATUTES:

- CONN. GEN. STAT. (2005).
Chapter 815j. Dissolution of marriage, legal separation and annulment
§ 46b-44. Residency requirements
§ 46b-45. Service and filing of complaint
§ 46b-46. Notice to nonresident party
§ 46b-53. Conciliation procedures; privileged communications.
§ 46b-67(a). 90-day waiting period.

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaint for dissolution of marriage, legal separation . . .
§ 25-3. Action for custody of minor children
§ 25-5. Automatic orders upon service of complaint
§ 25-11. Order of Pleadings
§ 25-27. Motion for contempt
§ 25-28. Order of notice
§ 25-30. [Sworn] Statements to be filed
§ 25-49. Definitions of uncontested, limited contested and contested matters
§ 25-50. Case management
[§ 25-51](#). When motion for default for failure to appear does not apply
[§ 25-52](#). Failure to appear for scheduled disposition
§ 25-57. Affidavit concerning [custody] children
§ 25-58. Reports of dissolution of marriage

FORMS:

[Court Forms \(Official\)](#)

- JD-FM-3 Summons Family Action
- JD-FM-158 Notice of automatic orders
- JD-FM-75 Application for waiver of fees/appointment of counsel
- JD-CL-44 Motion for first order of notice in dissolution of marriage action
- JD-CL-38 Order of notice
- JD-FM-165A Case management dates
- JD-FM-163 Case management agreement
- JD-FM-149 Parent education program—order, certificate and results
- JD-FM-166 Hearing dates for uncontested divorces in Connecticut

- VS-63 Health Department form
- JD-FM-164 Affidavit concerning children
- JD-FM-164A Addendum to affidavit concerning children
- JD-FM-6 Financial affidavit
- JD-CL-12 Appearance

HANDBOOK OF FAMILY FORMS FOR THE CONNECTICUT LAWYER

- Motion for custody and support pendente lite, Form VI-C-2, p. 108
- Motion for temporary joint custody and determination of joint custodial rights, Form VI-C-4, p. 110
- Grandparents' motion to intervene, Form VI-C-7, p. 114
- Grandparents' motion for visitation, Form VI-C-8, p. 115
- Motion to limit visitation, Form VI-C-9, p. 116
- Ex parte temporary injunction, Forms VII-A-6a to VII-A-6e, pp.145-150

DIGESTS:

- West Key Numbers: *Divorce*
 # 57-65. Jurisdiction
 # 70-74. Parties
 # 76-80. Process or notice
 # 88-108. Pleading
 # 109.1-137. Evidence
 # 140-150.1. Trial or hearing

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 §§ 196-386. Practice and procedure
- 27A C.J.S. *Divorce* (1986).
 §§ 91-305. Proceedings, trial, and judgments

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 Chapter 16. Jurisdiction
 Chapter 17. Parties
 Chapter 18. Process
 Chapter 19. Pleadings
- [STATE OF CONNECTICUT JUDICIAL BRANCH. DO IT YOURSELF DIVORCE GUIDE. JDP-FM-179 Rev. 5-05.](#) and [Supplement.](#)
- BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE (1998).
 Chapter 12. Getting divorced: procedures and paperwork.

COMPILER:

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06424. (860) 343-6560. Email: lawrence.cheeseman@jud.state.ct.us

Section 4.2.1

Jurisdiction

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the residency requirement for:

- filing a complaint for dissolution of marriage
- issuing a decree dissolving a marriage

SEE ALSO:

- [§ 3.2. Motion to dismiss](#)

DEFINITIONS:

- **JURISDICTION:** "is the power in a court to hear and determine the cause of action presented to it. Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process." Brown v. Cato, 147 Conn. 418, 422, 162 A.2d 175 (1960).
- **DOMICIL:** "To constitute domicile, the residence at the place chosen for the domicile must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicile of the person in which he has voluntarily fixed his habitation, not for mere temporary or special purpose, but with present intention of making it his home, unless something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home." Mills v. Mills, 119 Conn. 612, 617, 179 A. 5 (1935).
- **RESIDENCE:** "while domicile is essential to 'final judgment' residence alone provides jurisdiction for filing a dissolution complaint." Sauter v. Sauter, 4 Conn. App. 581, 582, 495 A.2d 1116 (1985).

STATUTES:

- CONN. GEN. STAT. (2005).
 - ❑ Residency requirement for filing a complaint for dissolution of marriage and for temporary relief
 - § 46b-44 (a). A complaint for dissolution of a marriage or for legal separation may be filed at any time after either party has established residence in this state.
 - § 46b-44 (b). Temporary relief pursuant to the complaint may be granted in accordance with sections 46b-56 and 46b-83 at any time after either party has established residence in this state.
 - ❑ Residency requirement for decree dissolving a marriage
 - § 46b-44 (c). A decree dissolving a marriage or granting a legal separation may be entered if: (1) One of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree; or (2) one of the parties was domiciled in this state at the time of the marriage and returned to this state with the intention of permanently remaining before the filing of the complaint; or (3) the cause for the dissolution of the marriage arose after either party moved into this state.
 - § 46b-44 (d). For the purposes of this section, any person who has served or is serving with the armed forces, as defined by section

27-103, or the merchant marine, and who was a resident of this state at the time of his or her entry shall be deemed to have continuously resided in this state during the time he or she has served or is serving with the armed forces or merchant marine.

CASES:

- W. v. W., 256 Conn. 657, 666, 779 A.2d 716 (2001). “Furthermore, even if it is the biological father who has been located at the address discovered by the plaintiff, this court does not have jurisdiction over him. He lives in Massachusetts. It is not alleged that he has ever been in Connecticut, that he has ever been married to the plaintiff, that he knows he is the father of the child, or that he has been served with any notice of these proceedings. As a result, this court cannot bring this individual before us pursuant to General Statutes §§ 46b-44 and 46b-46 in order to resolve the issue of support. Therefore, we conclude that the trial court did not abuse its discretion in applying the doctrine of equitable estoppel in this case.”
- Charles v. Charles, 243 Conn. 255, 256, 701 A.2d 650 (1997). “The sole issue on appeal is whether the Superior Court has subject matter jurisdiction, pursuant to General Statutes § 46b-44 (c)(1), over a dissolution of marriage action brought by an individual who is not a resident of Connecticut against a member of the Mashantucket Pequot Indian Tribe (tribe) who resides on the tribe's reservation in Ledyard. We answer this question in the affirmative.”
- Sauter v. Sauter, 4 Conn. App. 581, 584-585, 495 A.2d 1116 (1985). “The pendency of an action in one state is not a ground for abatement of a later action in another state In the interests of judicial economy, a court may, in the exercise of its discretion, order that the second action be stayed during the pendency of the first action, even though the actions are pending in different jurisdictions.”
- Taylor v. Taylor, 168 Conn. 619, 620-621, 362 A.2d 795 (1975). “the burden of proving an allegation of lack of jurisdiction . . . falls upon the party making that claim”
- Hames v. Hames, 163 Conn. 588, 595, 316 A.2d 379 (1972). “Obviously, even if canon law should deny the authority of the state to dissolve a marriage, religious doctrine could not nullify the decrees of our courts. U.S. Const., amend. 1, 14.”

**WEST KEY
NUMBERS:**

- *Divorce* # 57 Courts invested with jurisdiction
62 Domicile or residence of parties
64 Acquisition of domicile for purpose of divorce
65 Jurisdiction of the person

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Jurisdiction of the Court*

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 196-209. Jurisdiction
- 27A C.J.S. *Divorce* (1986).
§§ 96-113. Jurisdiction and venue

TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
Chapter 16. Jurisdiction.
§ 16.1. In general
§ 16.2. Residence requirement
§ 16.3. What constitutes residence
§ 16.4. Twelve month continuous residency requirement

- § 16.5. Jurisdiction based on domicile in the State at the time of marriage
- § 16.6. Jurisdiction based on cause of dissolution arising in the state
- § 16.7. Consent to jurisdiction
- § 16.8. Venue
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 - Chapter 20. Family law procedures
 - § 243. Exclusive jurisdiction of superior court; Venue
 - § 244. Jurisdiction required for dissolution; Domicile
 - a. Jurisdiction generally
 - b. Domicile as basis for dissolution generally
 - c. Domicile as requirement in Connecticut
 - d. What constitutes domicile
 - e. Jurisdiction over nonresidents
 - f. Jurisdiction over members of an Indian tribe
 - g. Loss of jurisdiction upon death of a party
 - h. Voluntary relinquishment of jurisdiction; Forum non Conveniens
 - i. Foreign judgments
 - § 245. Residence requirements
 - § 246. Exceptions to residence requirements
- BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE (1998).
 - Chapter 12, “Getting divorced: procedures and paperwork”
 - Who may file in Connecticut, p. 261
 - Jurisdiction, pp. 274-275
- ALI RESTATEMENT OF THE LAW OF CONFLICTS.
- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06424. (860) 343-6560. Email: lawrence.cheeseman@jud.state.ct.us

COMPILER:

Table 13 Domicile

Leaving	“When the parties left this State with the intention of never returning, their domicile in Connecticut was not thereby changed. The former domicile persists until a new one is acquired. <u>Mills v. Mills</u> , 119 Conn. 612, 617-618, 617, 179 A. 5 (1935).
Abandonment	“The law does not permit one to abandon, nor recognize an abandonment of a domicile until another has been established.” <u>McDonald v. Hartford Trust Co.</u> , 104 Conn. 169, 177, 132 A. 902.
Compared to address	“An ‘address’ is not domicile, and a person may have simultaneously two or more residence addresses but only one domicile at any one time.” <u>Taylor v. Taylor</u> , 168 Conn. 619, 620-621, 362 A.2d 795 (1975).

Section 4.2.2

Process

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the procedures for service of process in an action for dissolution of marriage.

DEFINITIONS:

- **PROCESS:** “shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff’s complaint.” Conn. Practice Book § 8-1(a) (2005 ed.)
- **MANNER OF SERVICE:** “Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” Conn. Gen. Stats. § 52-57(a) (2005)
- **USUAL PLACE OF ABODE:** “It is clear that one’s ‘usual place of abode’ is in the place where he would most likely have knowledge of service of process . . . Its chief purpose is to ensure actual notice to the defendant that the action is pending . . . The usual place of abode is generally considered to be the place where the person is living at the time of service . . . It is not necessarily his domicile . . . and a person may have more than one usual place of abode . . . In the final analysis, the determination of one’s usual place of abode is a question of fact and the court may consider various circumstances.” Plonski v. Halloran, 36 Conn. Supp. 335, 335-336, 420 A.2d 117 (1980).
- **LONG ARM STATUTE (domestic relations):** CONN. GEN. STAT. § 46b-46 (2005).

STATUTES:

- CONN. GEN. STAT. (2001).
 - § 46b-45(a). Service and filing of complaint.
 - § 46b-46. Notice to nonresident party
 - § 52-46. Time for service
 - § 52-48. Return day of process
 - § 52-50. Persons to whom process shall be directed
 - § 52-54. Service of summons
 - § 52-57(a). Manner of service upon individuals

COURT RULES:

- CONN. PRACTICE BOOK (2002).
 - Chapter 8. Commencement of action
 - § 8-1. Mesne Process
 - § 8-2. Waiver of court fees and costs
 - Chapter 10. Pleadings
 - § 10-12. Service of pleadings and other papers; responsibility of counsel or pro se party; documents and persons to be served
 - § 10-13. —Method of service
 - § 10-14. —Proof of service
 - § 10-15 —Numerous defendants

- § 10-16. —Several parties represented by one attorney
- § 10-17. —Service by indifferent person
- Chapter 11. Motions, requests, orders of notice, and short calendar
 - § 11-4. Applications for Orders of Notice
 - § 11-5. Subsequent Orders of Notice
 - § 11-6. Notice by publication
 - § 11-7. Attestation; Publication; Proof of compliance
 - § 11-8. Orders of Notice directed outside of the United States of America
- Chapter 25. Procedure in Family Matters
 - § 25-5. Automatic orders upon service of complaint or application
 - § 25-23. Motions, requests, Orders of Notice, and short calendar
 - § 25-28. Order of Notice

COURT FORMS:

- [Court Forms \(Official\)](#)
 - JD-FM-3. Family Summons
 - JD-FM-168, Order of notice by publication or mail in family cases

CASES:

- Boyles v. Preston, 68 Conn. App. 596, 603-604, 792 A.2d 878 (2002). “General Statutes § 52-123 provides that ‘[n]o writ, pleading, judgment or any kind of proceeding in court or course of justice shall be abated, suspended, set aside or reversed for any kind of circumstantial errors, mistakes or defects, if the person and the cause may be rightly understood and intended by the court.’ Section 52-123 is used to provide relief from defects found in the text of the writ itself. *Rogozinski v. American Food Service Equipment Corp.*, 211 Conn. 431, 434-35, 559 A.2d 1110 (1989). “It is not the policy of our courts to interpret rules and statutes in so strict a manner as to deny a litigant the pursuit of its complaint for mere circumstantial defects. . . . Indeed, § 52-123 of the General Statutes protects against just such consequences, by providing that no proceeding shall be abated for circumstantial errors so long as there is sufficient notice to the parties.” (Citations omitted.) *Hartford National Bank & Trust Co. v. Tucker*, 178 Conn. 472, 477-78, 423 A.2d 141 (1979), cert. denied, 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980). It is our expressed policy preference “to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court. . . . The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice. . . . Our practice does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure.” (Citations omitted; internal quotation marks omitted.) *Coppola v. Coppola*, 243 Conn. 657, 665, 707 A.2d 281 (1998).”
- Coppola v. Coppola, 243 Conn. 657, 666-667, 707 A.2d 281 (1998). “Allowing an amendment of the return date under the circumstances of the present case does not render § 52-46a meaningless. A return date may be amended but it still must comply with the time limitations set forth in § 52-48 (b). Section 52-48 (b) requires that “[a]ll process shall be made returnable not later than two months after the date of the process” Section 52-48 (b), therefore, with its two month limit, circumscribes the extent to which a return date may be amended.”
- Ceci Bros. Inc. v. Five Twenty One Corp., No. CV96 0150073 S (Conn. Super. Ct., J.D. Stamford, May 21, 1996), 16 CONN. L. RPTR. 595, 1996 WL 365273 (Conn. Super. 1996). “For valid abode service, the papers must be

left at the abode 'in such a place and in such a manner that it is reasonably probable the defendant will receive the notice of the action against him.' *Pozzi v. Harney*, 24 Conn. Sup. 488, 491, 194 A.2d 714 (1963). Thus slipping papers halfway under the door was held to be sufficient. *Id.* However, the court in *Pozzi* stated, 'pinning, tying or otherwise attaching a complaint to an outside door, where the complaint is subject to a number of outside influences over which the party to be served has no control, is generally not sufficient to constitute service.' *Id.* Service in a mailbox in the hallway outside the defendant's apartment was not sufficient. *Balkun v. DeAnzona*, 5 Conn. Cir. 580, 258 A.2d 482 (1969).

- *Cato v. Cato*, 226 Conn. 1,9, 626 A.2d 734 (1993). "We conclude that in a case such as this, where service of process can be accomplished by the most reliable means - that is, in-hand service of process by a process server in accordance with 52-57a - an order of notice is not required pursuant to 46b-46."
- *Babouder v. Abdennur*, 41 Conn. Supp. 258, 259, 262, 566 A2d 457(1989). "In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to come within the court's jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible This rule does not apply, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process."
- *Gluck v. Gluck*, 181 Conn. 225, 435 A.2d 35 (1980). "In particular, she [the defendant]claims that abode service is constitutionally deficient within the context of a dissolution proceeding. We disagree."
- *Smith v. Smith*, 150 Conn. 15, 183 A.2d 848 (1962). "Abode service is only a step removed from manual service and serves the same dual function of conferring jurisdiction and giving notice."

**WEST KEY
NUMBERS:**

- *Process* # 1 et seq.

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 200. Service and notice requirements
- 27A C.J.S. *Divorce* (1986).
§§ 120-125. Process or notice
- 72 C.J.S. *Process* (1987).

TEXTS:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 18. Process
§ 18.1. In general
§ 18.2. Issuance of writ and complaint
§ 18.3. Officers authorized to serve process
§ 18.4. Time limits
§ 18.5. Manner of service
§ 18.6. Abode service
§ 18.7. Substitute service
§ 18.8. Subsequent Orders of Notice
§ 18.9. Forms and procedures for Orders of Notice
§ 18.10. Service on parties who are incompetent or incarcerated;
Service on third parties
§ 18.11. Appearance of defendant
§ 18.12. Defects in process

- § 18.13. Constructive service; Attachment
 - 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 - Chapter 20. Family law procedures
 - § 248. Service of process
 - a. Service on resident defendants
 - b. Service on nonresidents
 - c. Service on mentally incompetent defendants
 - d. Action by and against minors
 - e. Service requisite for alimony and support
 - f. Service on the State
 - g. Third parties
 - STATE OF CONNECTICUT JUDICIAL BRANCH. DO IT YOURSELF DIVORCE GUIDE. (JD-FM-179 Rev. 5-05).
 - BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE (1998).
 - Chapter 12. Getting divorced: procedures and paperwork
 - Notifying your spouse /Service of process, pp. 276-278
 - Serving the absent spouse by certified or registered mail, pp. 279-282
 - Serving the absent spouse by publication, pp. 283-285
- COMPILER:**
- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06424. (860) 343-6560. Email: lawrence.cheeseman@jud.state.ct.us

Section 4.2.3

Parties

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to proper or necessary parties to an action for dissolution of marriage in Connecticut and third party intervention
- STATUTES:**
- CONN. GEN. STAT. (2005).
Chapter 815j Dissolution of Marriage, Legal Separation and Annulment
§ 46b-43. Capacity of minor to prosecute or defend
§ 46b-47. Third party intervention re custody of minor children
§ 46b-54. Counsel for minor children. Duties
§ 46b-55. Attorney General as party. Paternity establishment
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
9-1 Continuance for absent or nonresident defendant
9-3 Joinder of parties and actions; interested persons as plaintiffs
9-4 _____. Joinder of plaintiffs in one action
9-5 _____. Consolidation of actions
9.10 _____. Interested persons as defendants
9-18 Addition or substitution of parties; additional parties summoned in by court
9-19 _____. Nonjoinder and misjoinder of parties
9-22 _____. Motion to cite in new parties
9-24 Change of name by minor children
10-12 Service of the pleadings and other papers; responsibility of counsel or pro se party; documents and persons to be served
10-13 _____. Method of service
10-14 _____. Proof of service
10-15 _____. Numerous defendants
10-16 _____. Several parties represented by one attorney
10-17 _____. Service by indifferent person
- CASES:**
- Shockley v. Okeke, 48 Conn. Sup. 647 (2004). “On the basis of the express terms of §§ 52-11 and 46b-1 (6), we conclude that the trial court was without jurisdiction to change the name of a nonparty minor child incident to the dissolution of the parents' marriage.’ Id., [*Mayor v. Mayor*, 627,] 631-32. ‘Having examined all the statutes bearing on changes of name, we conclude that the legislature did not choose to grant the court jurisdiction to effect changes in the names of nonparty minor children incident to dissolutions of parents' marriages. A parent who wishes to effect a change of name for a minor child in the Superior Court must invoke the court's jurisdiction by proceeding under § 52-11 and must comply with the procedures established by Practice Book § 105 [now 9-24].’ Id., 633. 856 A.2d 1054”
 - Manndorf v. Dax, 13 Conn. App. 282, 287, 535 A.2d 1324 (1988). “Although interested in the defendant’s marriage to the husband, the plaintiff, as a nonparty to that marriage, had no right to maintain an action for

its annulment.”

- Salvio v. Salvio, 186 Conn. 311, 441 A.2d 190 (1982). "Since [the children]Gerald and Deborah had acquired no legal interest in the funds on deposit, they were not necessary parties for the purpose of establishing the trial court's jurisdiction over those accounts."
- Derderian v. Derderian, 3 Conn. App. 522, 490 A.2d 1008 cert. den. 196 Conn. 810, 495 A.2d 279. "In the present action, a precise, underlying debt of the brother to the defendant [his sister] had been determined in the second dissolution of marriage action. That debt was the award of the marital home to the defendant. Since there was an established debt at the time of the present partition action, the brother was not an indispensable party in the action."
- Manter v. Manter, 185 Conn. 502, 504-505, 441 A.2d 146 (1981). "Seeking custody or visitation rights, Allan Coombs moved on February 13, 1979, to intervene in the divorce action of *Manter v. Manter* under General Statutes 46b-57, which permits interested third parties to intervene in custody controversies before the Superior Court. At a preliminary hearing the trial court on April 2 granted Coombs standing for the expressly limited purpose of a visitation study by the family relations office. By supplemental order dated October 1, 1979, the court denied the motion to intervene on the dual grounds that no present dispute was then before the court and no facts were presented to qualify Coombs as an interested party under 46b-57. Coombs now appeals from that denial of his motion to intervene."
- Welfare Commissioner v. Anonymous, 33 Conn. Supp. 100, 102, 364 A.2d 250 (1976). "Indeed, there is no evidence in the Juvenile Court proceedings that does not tend to prove that the grandaunt provides a good home for the children and takes good care of them. Nevertheless, the commissioner claims that the Juvenile Court could properly find that the children are uncared for and homeless within the purview of General Statutes § 17-53. His claim is that the children are 'uncared for' because their mother is not taking care of them and is not providing a home for them and because their father has, either inferentially or explicitly, admitted that he cannot take care of them or make a home for them. The commissioner's claim, in short, is that the phrase 'uncared for' in General Statutes § 17-53 should be construed as if it read 'uncared for by each living biological parent.'"
- Sands v. Sands, 188 Conn. 98, 105-106, 448 A.2d 822 (1982) cert. den. 459 U.S. 1148, 103 S. Ct. 792, 74 L.Ed.2d 997. "The trial court could not ignore the fact that the state had a definite and imminent interest in this matter. Under these circumstances, the trial court clearly acted within its discretion in awarding \$1 per year alimony in order to protect a valid state interest."
- Vanderlip v. Vanderlip, 1 Conn. App. 158, 159, 468 A.2d 1253 (1984). "In this case, we cannot believe that the defendant was harmed by the refusal of the court to permit a continuance. On the day following the order to proceed immediately to trial, the defendant appeared. The usual order of trial was revamped in her favor. She was present at all relevant times. Under these circumstances, we are not persuaded that the trial court abused its discretion."

**WEST KEY
NUMBER:**

- *Divorce* # 70. Parties
 - #71 _____ . Plaintiff
 - #72 _____ . Defendant
 - #73 _____ . Intervention
 - # 74 _____ . Defense on behalf of state or public

DIGESTS:

- ALR DIGEST: Divorce and Separation
 - § 7 Who may institute
 - § 8 Interest of state; state as party
- CONNECTICUT FAMILY LAW CITATIONS: *Parties to actions*

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - Chapter 17. Parties
 - § 17.1. In general
 - § 17.2. Capacity to maintain action
 - § 17.3. Minors
 - § 17.4. Third parties
 - § 17.5. Death of a party

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 224-242. Parties
- 27A C.J.S. *Divorce* (1986).
 - §§ 114-119. Parties
- Annotation, *Power Of Incompetent Spouse's Guardian, Committee, Or Next Friend To Sue For Granting Or Vacation Of Divorce Or Annulment Of Marriage, Or To Make A Compromise Or Settlement In Such Suit*, 6 ALR3d 681 (1966).
- Annotation, *Standing Of Strangers To Divorce Proceeding To Attack Validity Of Divorce Decree*, 12 ALR2d 717
- Ralph V. Seep, Annotation, *Standing of spouse, ex-spouse, or putative spouse to sue as pension beneficiary under § 3(8) of Employee Retirement Income Security Act (ERISA)*, 112 ALR Federal 635 §§ 5,6 (1993).

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Section 4.3.0

Pleadings

CONN. PRACTICE BOOK § 25-11 (2005). Order of Pleadings

The order of pleadings shall be:

- (1) the plaintiff's complaint;
- (2) the defendant's motion to dismiss the complaint;
- (3) the defendant's motion to strike the complaint or claims for relief;
- (4) the defendant's answer, cross complaint and claims for relief;
- (5) the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;
- (6) the plaintiff's answer.

Sections:

[§ 3.1. Complaint](#)

[§ 3.2. Motion to Dismiss](#)

[§ 3.3. Motion to strike](#)

[§ 3.4. Answer/Cross Complaint](#)

[§ 3.5. Amendment to Complaint](#)

Section 4.3.1

Complaint

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to complaints for dissolution of marriage in Connecticut.
- DEFINITIONS:**
- "The paramount role of a court when considering domestic relations cases is one of a 'court of equity.' The **court's equity powers** are essential to its ability to fashion the appropriate relief in domestic relations cases." LaBow v. LaBow, 13 Conn. App. 330, 351, 537 A.2d 157 (1988) [emphasis added].
 - "The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution of a marriage. Without this wide discretion and broad equitable power, the courts in some cases might be unable fairly to resolve the parties' dispute, i.e., Where the sole asset of the parties is their residence to which both have contributed. Equity certainly does not contemplate such a result . . . Equity jurisdiction once obtained will be retained for the purpose of administering complete relief." Pasquariello v. Pasquariello, 168 Conn. 579, 585, 362 A.2d 835 (1975).
- STATUTES:**
- CONN. GEN. STAT. (2005).
 - § 46b-40. Grounds for dissolution of marriage; legal separation, amendment
 - § 46b-44. Residency requirement
 - § 46b-45. Service and filing of complaint
 - § 46b-45a. Allegation of pregnancy in pleadings. Disagreement as to paternity. Hearing.
 - § 46b-46. Notice to nonresident party; jurisdiction for alimony and support
 - § 46b-47. Complaint for dissolution of marriage on ground of confinement for mental illness; procedure
 - § 46b-48. Dissolution of marriage or annulment upon conviction of crime against chastity; procedure
 - § 52-45a. Commencement of civil actions. Contents and signature of process
 - § 52-54. Service of Summons
 - § 52-57. Manner of service upon individuals, municipalities, corporations, partnerships and voluntary associations.
- FORMS:**
- [Official Forms](#)
 - JD-FM-159. Divorce (Dissolution of Marriage) Complaint/Cross Complaint
 - Complaint—Form, 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999) § 19.5.
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
- Chapter 8. Commencement of action
 - § 8-1. Mesne Process
 - Chapter 25 Procedure in family matters
 - § 25-2. Complaints for Dissolution of Marriage, Legal Separation, or

Annulment

§ 25-7. Pleadings in General; Amendments to Complaint

§ 25-8. Amendment; New Ground for Dissolution of Marriage

§ 25-23. Motions, requests, orders of notice and short calendar

CASES:

- Vanderlip v. Vanderlip, 1 Conn. App. 158, 160, 468 A.2d 1253 (1984). "The unanswered complaint claimed only a dissolution of the marriage. The defendant filed no claims for relief. The case was, however, presented to and tried by the court on the contested issues of support, alimony and property division. See *Falker v. Samperi*, 190 Conn. 412, 427, 461 A.2d 681 (1983). Because of this procedure, we need not consider any of the questions raised in *Tsopanides v. Tsopanides*, 181 Conn. 248, 435 A.2d 34 (1980). Compare *LaCroix v. LaCroix*, 189 Conn. 685, 457 A.2d 1076 (1983)."
- LaCroix v. LaCroix, 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) "On appeal, the plaintiff's sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant's cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error."
- Winick v. Winick, 153 Conn. 294, 299, 216 A.2d 185 (1965). "The plaintiff was entitled to notice of, and an opportunity to be heard on, any application by the defendant for modification of the judgment. Accordingly, it was error for the court to modify the judgment on an oral motion and without notice to the plaintiff either specially or, in the usual practice, by the filing with the clerk of a motion as provided by 381 [now 17-46] of the Practice Book with service on counsel for the plaintiff as provided by 80 (2) [now 90-1]."

**WEST KEY
NUMBERS:**

- *Marriage* # 57
- *Marriage* # 58(1-8)
- *Divorce* # 88-95. Pleading
- *Husband and Wife* # 285 et seq.

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§243-265. Petition or Complaint
- 27A C.J.S. *Divorce* (1986).
§ 99-106. Domicile or Residence of Parties
§ 143-149. Pleadings

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 19. Pleadings
§ 19.1. Pleadings in general
§ 19.2. Form of pleadings
§ 19.3. Complaint—Generally
§ 19.4. ____ Prayer for relief
§ 19.5. ____ Form
§ 19.6. ____ Official form

- § 19.7. Complaint in action for custody or visitation
- § 19.8. Form—Complaint in action for custody or visitation
- § 19.12. Joinder of multiple claims or causes of action
- § 19.13. Amendment of pleadings
- § 19.14. Service and filing of pleadings and other papers
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
 - Chapter 25. Procedure in family matters, general provisions
 - § 25-2.1. Form of complaint; Required allegations
 - § 25-2.2. Pendente lite: Temporary orders; Standing orders
 - § 25-2.3. Judgment dissolving marriage
 - § 25-2.4. Complaints for change of name
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 - Chapter 20. Family law procedures
 - § 250. Pleadings in dissolution actions
 - b. The complaint
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 - Chapter 4. Motion Practice in Matrimonial Actions by Sandra P. Lax.

LAW REVIEWS:

- Cynthia C. George and Barbara M. Schelenger, *Family Law Jurisdiction*, 64 CONNECTICUT BAR JOURNAL 455 (1990).
- Prof. Max Rubenstein, *Domicile or Jurisdictional Basis of Divorce Decrees*, 23 CONNECTICUT BAR JOURNAL 280(1949).
- Francis X. Hennessy, *Jurisdiction - Notice in Matrimonial Matters*, 58 CONNECTICUT BAR JOURNAL 213 (1984)

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Section 4.3.2

Motion to Dismiss

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic references relating to the motion to dismiss in a dissolution of marriage proceeding in Connecticut
- DEFINITIONS:**
- “When a motion to dismiss is filed questioning subject matter jurisdiction it must be disposed of before there can be other proceedings.” Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 566 A2d 457 (1989).
 - “Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process.” Ibid., p.259
 - **Pendency of a prior action between the same parties** “is a ground for dismissal for the second action, for reasons of justice and equity and for the further reason that it is duplicative and therefore vexatious This rule does not apply, however, where the purposes of the two actions and the issues to be determined in them are different.” Ibid., p.263
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
Chapter 25. Procedures in Family Matters
§ 25-12. Motion to dismiss
§ 25-13. Grounds on Motion to Dismiss
 - (a) The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record.
 - (b) If an adverse party objects to this motion he or she shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.
§ 25-14 _____. Waiver and subject matter jurisdiction
§ 25-15 _____. Further pleading by defendant
- FORMS:**
- HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
Form III-A1. Motion to dismiss (court lacks jurisdiction over person and service of process was insufficient), p. 22
Form III-A-2. _____. (another action pending), p.23
Form III-A-3. _____ (inconvenient forum), p.24
Form III_A-4. Objection to defendant’s motion to dismiss or stay dated ____ 19 __ (inconvenient forum)
 - 2 CONN. PRACTICE BOOK (1997).
Form 106.1. Motion to dismiss
- CASES:**
- Spilke v. Spilke, No. FA 00 0440636 S, 2002 Ct. Sup. 2918, 2918, 2002 WL 521313 (Mar. 15, 2002). "The defendant has moved to dismiss this action for dissolution of marriage on the grounds that he had previously

obtained an annulment of the marriage in an Israeli judgment which, he asserts, is entitled to recognition under the doctrine of comity."

- Panganiban v. Panganiban, 54 Conn. App. 634, 638, 736 A.2d 190 (1999). "We conclude that the trial court properly denied the motion to dismiss because the defendant did have sufficient contact with Connecticut and the exercise of jurisdiction in this case does not offend the traditional notions of fair play and substantial justice."
- Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 566 A2d 457 (1989). "The defendant has filed a motion to dismiss the complaint on five grounds: (1) personal service upon the defendant was accomplished by trick, fraud or artifice; (2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under General Statutes § 46b-44; (3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief; (4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99; (5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the parties' minor children from Lebanon in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence." *The motion to dismiss was denied. See Table 7, below.*
- Rummel v. Rummel, 33 Conn. App. 214, 219, 635 A2d 295 (1993). "The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed."

**WEST KEY
NUMBERS:**

- *Divorce* #139.5. Dismissal, involuntary
#57-65. Jurisdiction, venue and limitation

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 279. Motion to dismiss
- 27A C.J.S. *Divorce* (1986).
§§ 201-204. Dismissal

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
§ 18.12. Defects in process
§ 19.8. Other responsive pleadings
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
§ 10-30.1. Function of motion to dismiss
§ 10-30.2. Special appearance not required
§ 10-30.3. Thirty day requirement
§ 10-31.1. Scope of motion to dismiss
§ 10-31.2. Circumstantial defects not to abate pleadings
§ 10-32.1. Subject matter jurisdiction cannot be waived
§ 10-33.1. Lack of standing (subject matter jurisdiction)
§ 10-34.1. Interlocutory appeal from denial of motion to dismiss not allowed
§ 10-34.2. Further pleading not allowed
§ 25-57.3. Visitation rights; persons other than parents
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions

c. Pleading by defendant

- FAMILY LAW PRACTICE IN CONNECTICUT (1996)
Chapter 4. Motion Practice in Matrimonial Actions, §§4.6, 4.7
Chapter 5. Motion Practice Before Trial § 5.20.

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Table 14 Badouder v. Abdennur

41 Conn. Supp. 258, 566 A2d 457 (1989)	
(1) personal service upon the defendant was accomplished by trick, fraud or artifice.	“In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to come within the court’s jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible This rule does not, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process.” <u>Ibid.</u> , p. 262.
(2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under General Statutes § 46b-44	“The plaintiff in the present case sufficiently meets the residency requirement in § 46b-44 (a). This court, therefore, has subject matter jurisdiction.” <u>Ibid.</u> , p. 267
(3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief;	“The rule that the pendency of a prior action between the same parties and to the same ends is grounds for dismissal has efficacy only where the actions are pending in the same jurisdiction. The pendency of an action in one state is not a ground for abatement of a later action in another state.” <u>Sauter v. Sauter</u> , 4 Conn. App. 581, 584, 495 A2d 1116 (1985).
(4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99.	“ . . . failure to file such a statement is not a jurisdictional defect and there is jurisdiction, at least, for the purposes of a dissolution of the marriage.” <u>Ibid.</u> , p. 261
(5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the parties’ minor children from Lebanon in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence.	“The clean hands doctrine cannot be raised on a motion to dismiss.” <u>Ibid.</u> , p. 261

Section 4.3.3

Motion to Strike

A Guide to Resources in the Law Library

SCOPE:

Bibliographic references relating to the motion to strike in a dissolution of marriage or legal separation proceeding in Connecticut

COURT RULES:

- CONN. PRACTICE BOOK (2005).
Chapter 25. Procedures in Family Matters
§ 25-16. Motion to Strike
 - (a) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint or cross complaint, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any claim for relief in any such complaint or cross complaint, or (3) the legal sufficiency of any such complaint or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint or cross complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint or cross complaint, or any part of that answer contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.
 - (b) A motion to strike on the ground of the nonjoinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to his or her identity and residence and must state his or her interest in the cause of action.
- §25-17. _____ . Date of hearing
- §25-18. _____ . Reasons
- §25-19. _____ . Memorandum of law
- §25-20. _____ . When memorandum of decision required
- §25-21. _____ . Substitute pleading part of another cause or defense

CASES:

- LaBow v. LaBow, 69 Conn. App. 760, 764, 796 A.2d 592 (2002). "Ronald LaBow [defendant] filed a motion to strike the petition for failure to state a claim for which relief can be granted, pursuant to Practice Book § 10-39. In ruling on the motion to strike, the court, Moran, J., sua sponte considered whether the court had subject matter jurisdiction over the petition for a new trial. Relying on *Summerville v. Warden*, 229 Conn. 397, 426, 641 A.2d 1356 (1994), the court concluded that the statute of limitations, General Statutes § 52-582, barred the petition for a new trial and that the court therefore lacked subject matter jurisdiction. The court dismissed the petition, and Myrna LaBow appealed.
- Gibson v. Gibson, 34 Conn. App. 139, 140, 640 A.2d 145 (1994). "The plaintiff in this dissolution of marriage action has filed a motion to strike the issue of postjudgment counsel fees from the defendant's brief. The

dispositive issue is whether this court's January 27, 1994 dismissal of the defendant's amended appeal, which raised the issue of counsel fees, precludes the defendant from addressing this same issue in his brief on the main appeal."

**WEST KEY
NUMBERS:**

- *Divorce* # 88-108. Pleading

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
§ 19.8. Other responsive pleadings
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
§ 10-39.1. Function of Motion to Strike
§ 10-39.2. Well-pleaded allegations admitted
§ 10-45-1. Judgment on the pleadings; motion for
§ 25-16.1. Misjoinder of parties in family matters
§ 25-22.1. Misjoinder of causes of action in family matters
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions
c. Pleading by defendant
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
Chapter 4. Motion Practice in Matrimonial Actions
Chapter 5. Motion Practice Before Trial

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Section 4.3.4

Answer/Cross Complaint

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to answers and/or cross complaints in dissolution of marriage proceedings in Connecticut
- STATUTES:** CONN. GEN. STAT. (2005).
- § 46b-41. Complaint includes cross-complaints or cross actions. Whenever the word "complaint" is used in this chapter or section 46b-1 or 51-348a, it shall include cross-complaints or cross actions where appropriate.
- COURT RULES:** CONN. PRACTICE BOOK (2005).
- § 25-9. Answer, Cross Complaint, Claims for Relief by Defendant
 - § 25-10. Answer to Cross Complaint
- FORMS:**
- [Official Forms](#)
 - JD-FM-150. Divorce (Dissolution of Marriage) Complaint/Cross Complaint
 - JD-FM-160. Divorce (Dissolution of Marriage) Answer
 - *Answer and Cross Complaint—Form*, 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999) § 19.10.
- CASES:**
- *Viveros v. Viveros*, No. FA 03 0193290 (Conn. Super. Ct., J.D. Stamford, Apr. 8, 2004). "On December 19, 2003 the plaintiff filed a request for leave to amend complaint. No objection was filed and the amended complaint is deemed filed by consent of the defendant. The amended complaint alleges adultery as the sole ground for dissolution. It is one of the many causes recited in § 46b-40(c), Conn. Gen. Statutes upon a finding that it occurred. In this case the plaintiff has not proven her allegation of adultery occurring prior to the irretrievable breakdown, *Venuti v. Venuti*, 185 Conn. 156, 158, 440 A.2d 878 (1991). The defendant filed a cross complaint alleging that the marriage has broken down irretrievably. The plaintiff filed an answer admitting the allegation. The Court concludes that the marriage had broken down irretrievably by December 2002."
 - *Rummel v. Rummel*, 33 Conn.App. 214, 218-219, 635 A2d 295 (1993) "The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed."
 - *LaCroix v. LaCroix*, 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) "On appeal, the plaintiff's sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and

could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant's cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error."

ENCYCLOPEDIAS:

- 27A C.J.S. *Divorce* (1986).
 §§ 150-153. Answer
 § 154. Cross action or counterclaim

**TEXTS &
TREASTISES:**

- HANDBOOK OF FORMS FOR CONNECTICUT FAMILY LAWYERS (1991).
 Why it is a good practice to file a cross-complaint. Answer or Answer and Cross-Complaint: Notes & Comments, p. 9.
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 Chapter 19. Pleadings
 § 19.9. Answer, cross-complaint, and claims for relief by defendant
 § 19.10. Answer and Cross Complaint—Form
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 Chapter 20. Family law procedures
 § 247. Domicile and residence in cross-complaints
 § 250. Pleadings in dissolution actions
 c. Pleading by defendant
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
 Chapter 25. Procedure in family matters, general provisions
 § 25-9.1. Order of pleadings in family matters; Discovery in general
 § 25-9.2. Pleading claims for relief

COMPILER:

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Section 4.3.5

Amendment to Complaint

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to amendment of a complaint or cross-complaint.
- DEFINITIONS:**
- **Allowance of amendment:** "Much depends upon the particular circumstances of each case. The factors to be considered include unreasonable delay, fairness to the opposing parties, and negligence of the party offering the amendment." *Antonofsky v. Goldberg*, 144 Conn. 594, 597, 136 A.2d 338 (1957).
- STATUTES:**
- CONN. GEN. STAT. (2002).
§ 46b-67. Waiting Period. Effect of decree
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
- Chapter 25. Procedures in Family Matters
- § 25-2. Complaints for dissolution of marriage
 - § 25-3. Action for custody of minor child
 - § 25-4. Action for visitation of minor child
 - § 25-7. Pleadings in General; Amendments to Complaint
 - § 25-8. Amendment; new Ground for Dissolution of Marriage
- Chapter 10
- § 10-59. Amendments; Amendment as of Right by Plaintiff
 - § 10-60. Amendment by Consent – Order of Judicial Authority, or Failure to Object
 - § 10-61. Pleading after Amendment
- FORMS:**
- HANDBOOK OF FORMS FOR CONNECTICUT FAMILY LAWYERS (1991).
Form II-A-3 "Motion to amend complaint," p. 7
Form II-A-4 "Amendment to complaint," p.8
- CASES:**
- *Viveros v. Viveros*, No. FA 03 0193290 (Conn. Super. Ct., J.D. Stamford, Apr. 8, 2004). "On December 19, 2003 the plaintiff filed a request for leave to amend complaint. No objection was filed and the amended complaint is deemed filed by consent of the defendant. The amended complaint alleges adultery as the sole ground for dissolution. It is one of the many causes recited in § 46b-40(c), Conn. Gen. Statutes upon a finding that it occurred. In this case the plaintiff has not proven her allegation of adultery occurring prior to the irretrievable breakdown, *Venuti v. Venuti*, 185 Conn. 156, 158, 440 A.2d 878 (1991). The defendant filed a cross complaint alleging that the marriage has broken down irretrievably. The plaintiff filed an answer admitting the allegation. The Court concludes that the marriage had broken down irretrievably by December 2002."
 - *Welch v. Welch*, No. FA 00-0072505, 2002 Ct. Sup. 6446, 6450-6451 (May 17, 2002). "Here the defendant did not seek leave to amend her cross-complaint until after the trial. The plaintiff objects to the allowance of the amendment because it raises a new cause of action not previously alleged. In exercising its discretion in determining whether the court should allow the amendment, the

court is guided by the considerations referred to in *Antonofsky* . . . Lastly, it is not fair to the plaintiff to allow the amendment where he has not been put on notice of it and where its necessity, if any, is caused by the defendant's own failure to prove the grounds alleged in her cross-complaint. The request for leave to amend the cross-complaint is denied."

- Cugini v. Cugini, 13 Conn. App. 632, 636, 538 A.2d 1060 (1988). "The defendant also claims an abuse of discretion by the trial court in permitting an amendment to the complaint to allege as an additional ground for dissolution that he had been convicted of an infamous crime. This is one of the grounds upon which dissolution may be sought; General Statutes 46b-40(c)(9); and, in any event, it was not the ground upon which dissolution was granted in this case."
- Rodearmel v. Rodearmel, 173 Conn. 273, 274, 377 A.2d 260 (1977). "On the appeal, the defendant briefed six claims of error. Four of these are addressed to discretionary rulings of the court in granting the plaintiff permission to amend his complaint to add a new claim for relief, in assigning the defendant's interest in the marital residence to the plaintiff, in not awarding a greater amount of alimony and in not awarding to the defendant additional counsel fees. We find no error in any of these rulings as to each of which the trial court has broad discretion."
- LaBow v. LaBow, 171 Conn. 433, 441-442, 370 A.2d 990 (1976). "The court below was correct in permitting the plaintiff to amend her complaint, adding alternative bases for the subject-matter jurisdiction of the court. Section 132 of the Practice Book allows a party to amend with leave of the court, which was here given. The court had jurisdiction of the action based on the plaintiff's residence in this state, even though the initial complaint alleged domicile."
- Baker v. Baker, 166 Conn. 476, 486, 352 A.2d 277 (1974). "It is well settled that amendments, unless they allege a new cause of action, relate back to the date of the complaint While the plaintiff argues, with some justification, that the defendant should be estopped from asserting this claim in that it was at his request or insistence that the prayer for relief was amended so as to ask for a divorce rather than a legal separation, in light of the view we take of this claim it is unnecessary to decide that issue. The amendment, altering as it did only the prayer for relief, clearly did not change the factual bases or series of transactions upon which the complaint was based."
- Kilpatrick v. Kilpatrick, 144 Conn. 738, 739, 131 A.2d 645 (1974). "The only other claim advanced by the defendant upon which we wish to comment is that at the time of trial the court permitted the plaintiff to amend her prayers for relief by adding a request for alimony. The record fails to show that the defendant raised at trial any claim of law in this regard. But if it is assumed that he did so, the amendment was within the discretion of the court and we find nothing to indicate that its discretion was abused."
- Kelsall v. Kelsall, 139 Conn. 163, 165, 90 A.2d 878 (1952). "An amendment to a complaint relates back to the institution of the action for some purposes; . . . but when it sets up a new and different cause of action it speaks as of the date when it is filed To be valid, it must state a cause of action which exists at that time. A cause of action must arise from a single group of facts Acts amounting to intolerable cruelty and acts amounting to desertion do not constitute a single group of facts. They are separate and distinct. An amendment to a complaint for divorce on the ground of intolerable cruelty which sets up desertion in a new count is the statement of a new cause of action."

**WEST KEY
NUMBERS**

Divorce # 104 – Amended and Supplemental Pleadings

- 27A C.J.S. *Divorce* (1986).
§ 157. Amended and supplemental pleadings
- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 262-265. Amendment, Supplemental Pleadings

**TEXTS &
TREATISES**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
§ 19.13. Amendment of Pleadings
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
Chapter 25. Procedure in family matters, general provisions
§ 28-8.1. Amendments; Family matter complaint
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE* (1997).
Chapter VII. Amendments to Pleadings

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Table 15 Default in Family Matters

Default in Family Matters	
Failure to file an Appearance	"Any case claiming a dissolution of marriage, legal separation, or annulment in which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50. If the defendant has not filed an appearance by the date assigned for disposition, the case may proceed to judgment without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases." CONN. PRACTICE BOOK § 25-51(a) (2002) [emphasis added].
	"If the defendant files an appearance by the date assigned for disposition, the presiding judge or a designee shall determine which track the case shall take pursuant to Section 25-50." CONN. PRACTICE BOOK § 25-51(b) (2002) [emphasis added].
Failure to appear for scheduled disposition	"If a party fails to appear in person or by counsel for a scheduled disposition, the opposing party may introduce evidence and the case may proceed to judgment without further notice to such party who failed to appear. CONN. PRACTICE BOOK § 25-52 (2002) [emphasis added]."
See also:	<ul style="list-style-type: none"> • 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, <i>CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS</i> (1999).

	<p>Chapter 24. Trial; Procedural aspects</p> <p>§ 24.12. Default</p> <ul style="list-style-type: none"> • 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002). <p>Chapter 20. Family law procedures</p> <p>§ 258. Limited contested and contested trials</p> <p>d. Proceeding without the defendant</p>
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Chapter 5

Legal Separation in Connecticut

A Guide to Resources in the Law Library

- "A decree of legal separation shall have the effect of a decree dissolving marriage except that neither party shall be free to marry." CONN. GEN. STATS. §46b-67(b) (2005). [" . . . wherever in the general statutes . . . the term 'marriage' is used or defined, a civil union shall be included in such use or definition." 2005 CONN. ACTS 10 § 15 (EFFECTIVE OCTOBER 1, 2005). See [Full Text](#) for exceptions]
- **Civil Union:** "Wherever in the general statutes the terms 'spouse', 'family', 'immediate family', 'dependent', 'next of kin' or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term 'marriage' is used or defined, a civil union shall be included in such use or definition. 2005 CONN. ACTS 10 § 15 (Effective October 1, 2005).
- **"Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman." 2005 CONN. ACTS 10 § 14 (EFFECTIVE OCTOBER 1, 2005).

Section 5.1

Effect, Definition and History

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to distinction between legal separation and a dissolution of marriage.

DEFINITION:

- **EFFECT OF DECREE OF LEGAL SEPARATION:** "A decree of legal separation shall have the effect of a decree dissolving marriage except that neither party shall be free to marry." CONN. GEN. STAT. § 46b-67(b) (2001)
- "... a decree of separation does not affect the married status of the separated persons." Viglione v. Viglione, 22 Conn. Supp. 65, 68, 160 A.2d 501 (1960).

STATUTES:

- CONN. GEN. STAT. (2005).
 - § 46b-65. Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.
 - § 46b-67. Waiting period. Effect of decree

HISTORY:

1955 (Supp. 1955, vol. 2) § 3006d. *First Legislation*.

COURT RULES :

- CONN. PRACTICE BOOK (2005).
 - § 25-36. Motion for decree finally dissolving marriage after decree of legal separation
 - § 25-37. —Notice and hearing.

FORMS:

- 2 CONN. PRACTICE BOOK (1997).
 - Form 504.1. Complaint for legal separation
 - [Form 504.2. Petition for decree dissolving marriage after legal separation](#)
- MARY ELLEN WYNN AND ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
 - Form II-A-2. Complaint, p. 6.
 - Form XVIII-A-1a. Petition for decree dissolving marriage after legal separation, p. 261
 - Form XVIII-A-2. Declaration of resumption of marital relationship, p. 264

CASES:

- Hickenbottom v. Hickenbottom, No. FA00 0178810S, 2001 Ct. Sup. 10444, 10444, 2001 WL 985061 (Aug. 1, 2001). "By amended complaint the plaintiff has requested a decree of legal separation because the marriage has irretrievably broken down. The defendant has filed a cross-complaint alleging the same ground but has asked that the marriage be dissolved. The evidence clearly indicates this marriage has broken down irretrievably with no hope of reconciliation. Judgment may enter dissolving the marriage on the defendant's cross-complaint."

WEST KEY

NUMBERS:

ENCYCLOPEDIAS:

- *Husband and Wife* # 277-301. Separation and separate maintenance
- 24 AM. JUR. 2D *Divorce & Separation* (1998).
§ 397. —Converting limited divorce into absolute divorce
- 41 C.J.S. *Husband & Wife* (1991).
§§ 220-241. Separation agreements and separate maintenance

TEXTS &

TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 10. Legal separation
§ 10.1. In general
§ 10.2. Basis for legal separation
§ 10.6 Distinction from dissolution
§ 10.9. Reconciliation
§ 10.10. Conversion to dissolution—Procedure
§ 10.11. —Legal considerations
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 241. History of Connecticut's divorce law
§ 262. Legal Separation
- 1A WESLEY HORTON AND KIMBERLY A. KNOX, CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED, SUPERIOR COURT CIVIL RULES (4th ed. 1998).
Authors' Comments following § 25-36
- MARY ELLEN WYNN AND ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
Chapter XVIII. Legal separation
Notes & Comments, p. 206.

LAW REVIEWS:

- Arthur E. Balbirer and Gaetano Ferro, *Survey of 1991 Developments In Connecticut Family Law*, 66 CONN. B.J. 40 (1992).
Conversion of legal separation to dissolution, p. 62-63.

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Section 5.2

Grounds for Legal Separation

A Guide to Resources in the Law Library

See §4.1 et seq.

**Grounds for Dissolution of
Marriage or Legal Separation.**

Section 5.3

Procedures

A Guide to Resources in the Law Library

- SCOPE:**
- Selected bibliographic resources relating to procedures in a dissolution of marriage (divorce) commenced after October 1, 1997
- DEFINITIONS:**
- **Jurisdiction:** “The Superior Court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation.” CONN. GEN. STAT. §46b-42 (2001).
- STATUTES:**
- CONN. GEN. STAT. (2005).
Chapter 815j. Dissolution of marriage, legal separation and annulment
§ 46b-44. Residency requirements
§ 46b-45. Service and filing of complaint
§ 46b-46. Notice to nonresident party
§ 46b-53. Conciliation procedures; privileged communications.
§ 46b-67(a). 90-day waiting period.
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
Chapter 25. **Procedure in Family Matters**
§ 25-2. Complaint for legal separation . . .
§ 25-3. Action for custody of minor children
§ 25-5. Automatic orders upon service of complaint
§ 25-11. Order of Pleadings
§ 25-27. Motion for contempt
§ 25-28. Order of notice
§ 25-30. [Sworn] Statements to be filed
§ 25-49. Definitions of uncontested, limited contested and contested matters
§ 25-50. Case management
[§ 25-51](#). When motion for default for failure to appear does not apply
[§ 25-52](#). Failure to appear for scheduled disposition
§ 25-57. Affidavit concerning [custody] children
§ 25-58. Reports of dissolution of marriage
- FORMS:**
- [Court Forms \(Official\)](#)
- JD-FM-3 Summons Family Action
 - JD-FM-158 Notice of automatic orders
 - JD-FM-75 Application for waiver of fees/appointment of counsel
 - JD-CL-44 Motion for first order of notice in dissolution of marriage action
 - JD-CL-38 Order of notice
 - JD-FM-165A Case management dates

- JD-FM-163 Case management agreement
- JD-FM-149 Parent education program—order, certificate and results
- JD-FM-166 Hearing dates for uncontested divorces in Connecticut
- VS-63 Health Department form
- JD-FM-164 Affidavit concerning children
- JD-FM-164A Addendum to affidavit concerning children
- JD-FM-6 Financial affidavit
- JD-CL-12 Appearance

HANDBOOK OF FAMILY FORMS FOR THE CONNECTICUT LAWYER

- Motion for custody and support pendente lite, Form VI-C-2, p. 108
- Motion for temporary joint custody and determination of joint custodial rights, Form VI-C-4, p. 110
- Grandparents' motion to intervene, Form VI-C-7, p. 114
- Grandparents' motion for visitation, Form VI-C-8, p. 115
- Motion to limit visitation, Form VI-C-9, p. 116
- Ex parte temporary injunction, Forms VII-A-6a to VII-A-6e, pp.145-150

DIGESTS:

- West Key Numbers: *Divorce*
 - # 57-65. Jurisdiction
 - # 70-74. Parties
 - # 76-80. Process or notice
 - # 88-108. Pleading
 - # 109.1-137. Evidence
 - # 140-150.1. Trial or hearing

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
 - §§ 196-386. Practice and procedure
- 27A C.J.S. *Divorce* (1986).
 - §§ 91-305. Proceedings, trial, and judgments

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 - Chapter 16. Jurisdiction
 - Chapter 17. Parties
 - Chapter 18. Process
 - Chapter 19. Pleadings
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 - Chapter 20. Family law procedures
 - § 262. Legal Separation
 - c. Procedure
- [State of Connecticut Judicial Branch. Do It Yourself Divorce Guide. \(1998\).](#)
- BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE (1998).
 - Chapter 12. Getting divorced: procedures and paperwork.

COMPILER:

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Section 5.3.1

Jurisdiction

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the residency requirement for:

- filing a complaint for dissolution of marriage
- issuing a decree dissolving a marriage

SEE ALSO:

- [§ 3.2. Motion to dismiss](#)

DEFINITIONS:

- **JURISDICTION:** "is the power in a court to hear and determine the cause of action presented to it. Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process." Brown v. Cato, 147 Conn. 418, 422, 162 A.2d 175 (1960).
- **DOMICIL:** "To constitute domicile, the residence at the place chosen for the domicile must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicile of the person in which he has voluntarily fixed his habitation, not for mere temporary or special purpose, but with present intention of making it his home, unless something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home." Mills v. Mills, 119 Conn. 612, 617, 179 A. 5 (1935).
- **RESIDENCE:** "while domicile is essential to 'final judgment' residence alone provides jurisdiction for filing a dissolution complaint." Sauter v. Sauter, 4 Conn. App. 581, 582, 495 A.2d 1116 (1985).

STATUTES:

- CONN. GEN. STAT. (2005).
 - ❑ Residency requirement for filing a complaint for legal separation and for temporary relief
 - §46b-44 (a). A complaint for legal separation may be filed at any time after either party has established residence in this state.
 - §46b-44 (b). Temporary relief pursuant to the complaint may be granted in accordance with sections 46b-56 and 46b-83 at any time after either party has established residence in this state.
 - ❑ Residency requirement for decree granting a legal separation
 - §46b-44 (c). A decree dissolving a marriage or granting a legal separation may be entered if: (1) One of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree; or (2) one of the parties was domiciled in this state at the time of the marriage and returned to this state with the intention of permanently remaining before the filing of the complaint; or (3) the cause for the dissolution of the marriage arose after either party moved into this state.
 - §46b-44 (d). For the purposes of this section, any person who has served or is serving with the armed forces, as defined by section

27-103, or the merchant marine, and who was a resident of this state at the time of his or her entry shall be deemed to have continuously resided in this state during the time he or she has served or is serving with the armed forces or merchant marine.

CASES:

- Sauter v. Sauter, 4 Conn. App. 581, 584-585, 495 A.2d 1116 (1985). “The pendency of an action in one state is not a ground for abatement of a later action in another state In the interests of judicial economy, a court may, in the exercise of its discretion, order that the second action be stayed during the pendency of the first action, even though the actions are pending in different jurisdictions.”
- Taylor v. Taylor, 168 Conn. 619, 620-621, 362 A.2d 795 (1975). “the burden of proving an allegation of lack of jurisdiction . . . falls upon the party making that claim”
- Hames v. Hames, 163 Conn. 588, 595, 316 A.2d 379 (1972). “Obviously, even if canon law should deny the authority of the state to dissolve a marriage, religious doctrine could not nullify the decrees of our courts. U.S. Const., amend. 1, 14.”

WEST KEY NUMBERS:

- *Divorce* # 57 Courts invested with jurisdiction
62 Domicile or residence of parties
64 Acquisition of domicile for purpose of divorce
65 Jurisdiction of the person

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Jurisdiction of the Court*

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 196-209. Jurisdiction
- 27A C.J.S. *Divorce* (1986).
§§ 96-113. Jurisdiction and venue
- Robin Cheryl Miller, Annotation, *Doctrine Of Forum Non Conveniens: Assumption Or Denial Of Jurisdiction Of Action Involving Matrimonial Dispute*, 55 ALR5th 647 (1998).
- Robert A. Brazener, Annotation, *Validity Of Statute Imposing Durational Residency Requirements For Divorce Applicants*, 57 ALR3d 221 (1974).
- Emile F. Short, Annotation, *What Constitutes Residence Or Domicil Within State By Citizen Of Another Country For Purpose Of Jurisdiction In Divorce*, 51 ALR3d 223 (1973).

TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 10. Legal separation
§ 10.3. Jurisdiction
Chapter 16. Jurisdiction.
§ 16.1. In general
§ 16.2. Residence requirement
§ 16.3. What constitutes residence
§ 16.4. Twelve month continuous residency requirement
§ 16.5. Jurisdiction based on domicile in the State at the time of marriage
§ 16.6. Jurisdiction based on cause of dissolution arising in the state
§ 16.7. Consent to jurisdiction
§ 16.8. Venue
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).

Chapter 20. Family law procedures

§ 243. Exclusive jurisdiction of superior court; Venue

§ 244. Jurisdiction required for dissolution; Domicile

j. Jurisdiction generally

k. Domicile as basis for dissolution generally

l. Domicile as requirement in Connecticut

m. What constitutes domicile

n. Jurisdiction over nonresidents

o. Jurisdiction over members of an Indian tribe

p. Loss of jurisdiction upon death of a party

q. Voluntary relinquishment of jurisdiction; Forum non
Conveniens

r. Foreign judgments

§ 245. Residence requirements

§ 246. Exceptions to residence requirements

§ 262. Legal separation

b. Jurisdiction required

- BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE (1998).

Chapter 12, “Getting divorced: procedures and paperwork”

— Who may file in Connecticut, p. 261

— Jurisdiction, pp. 274-275

- ALI RESTATEMENT OF THE LAW OF CONFLICTS.

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Table 16 Domicile

Leaving	“When the parties left this State with the intention of never returning, their domicile in Connecticut was not thereby changed. The former domicile persists until a new one is acquired. <u>Mills v. Mills</u> , 119 Conn. 612, 617-618, 617, 179 A. 5 (1935).
Abandonment	“The law does not permit one to abandon, nor recognize an abandonment of a domicile until another has been established.” <u>McDonald v. Hartford Trust Co.</u> , 104 Conn. 169, 177, 132 A. 902.
Compared to address	“An ‘address’ is not domicile, and a person may have simultaneously two or more residence addresses but only one domicile at any one time.” <u>Taylor v. Taylor</u> , 168 Conn. 619, 620-621, 362 A.2d 795 (1975).

Section 5.3.2

Process

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the procedures for service of process in an action for dissolution of marriage.

DEFINITIONS:

- **PROCESS:** “shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff’s complaint.” Conn. Practice Book §8-1(a)
- **MANNER OF SERVICE:** “Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” Conn. Gen. Stats. §52-57(a) (2005).
- **USUAL PLACE OF ABODE:** “It is clear that one’s ‘usual place of abode’ is in the place where he would most likely have knowledge of service of process . . . Its chief purpose is to ensure actual notice to the defendant that the action is pending . . . The usual place of abode is generally considered to be the place where the person is living at the time of service . . . It is not necessarily his domicile . . . and a person may have more than one usual place of abode . . . In the final analysis, the determination of one’s usual place of abode is a question of fact and the court may consider various circumstances.” Plonski v. Halloran, 36 Conn. Supp. 335, 335-336, 420 A.2d 117 (1980).
- **LONG ARM STATUTE (domestic relations):** CONN. GEN. STAT. § 46b-46 (2005).

STATUTES:

- CONN. GEN. STAT. (2005).
 - § 46b-45(a). Service and filing of complaint.
 - § 46b-46. Notice to nonresident party
 - § 52-46. Time for service
 - § 52-48. Return day of process
 - § 52-50. Persons to whom process shall be directed
 - § 52-54. Service of summons
 - § 52-57(a). Manner of service upon individuals

COURT RULES:

- CONN. PRACTICE BOOK (2005).
 - Chapter 8. Commencement of action
 - § 8-1. Mesne Process
 - § 8-2. Waiver of court fees and costs
 - Chapter 10. Pleadings
 - § 10-12. Service of pleadings and other papers; responsibility of counsel or pro se party; documents and persons to be served
 - § 10-13. —Method of service
 - § 10-14. —Proof of service
 - § 10-15 —Numerous defendants

- § 10-16. —Several parties represented by one attorney
- § 10-17. —Service by indifferent person
- Chapter 11. Motions, requests, orders of notice, and short calendar
 - § 11-4. Applications for Orders of Notice
 - § 11-5. Subsequent Orders of Notice
 - § 11-6. Notice by publication
 - § 11-7. Attestation; Publication; Proof of compliance
 - § 11-8. Orders of Notice directed outside of the United States of America
- Chapter 25. Procedure in Family Matters
 - § 25-5. Automatic orders upon service of complaint or application
 - § 25-23. Motions, requests, Orders of Notice, and short calendar
 - § 25-28. Order of Notice

COURT FORMS:

- [Court Forms \(Official\)](#)
 - JD-FM-3. Family Summons
 - JD-FM-168, Order of notice by publication or mail in family cases

CASES:

- Cato v. Cato, 226 Conn. 1,9, 626 A.2d 734 (1993). "We conclude that in a case such as this, where service of process can be accomplished by the most reliable means - that is, in-hand service of process by a process server in accordance with 52-57a - an order of notice is not required pursuant to 46b-46."
- Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 262, 566 A2d 457(1989). "In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to come within the court's jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible This rule does not apply, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process."
- Gluck v. Gluck, 181 Conn. 225, 435 A.2d 35 (1980). "In particular, she [the defendant]claims that abode service is constitutionally deficient within the context of a dissolution proceeding. We disagree."
- Smith v. Smith, 150 Conn. 15, 183 A.2d 848 (1962). "Abode service is only a step removed from manual service and serves the same dual function of conferring jurisdiction and giving notice."

WEST KEY NUMBERS:

- *Process* # 1 et seq.

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 200. Service and notice requirements
- 27A C.J.S. *Divorce* (1986).
§§ 120-125. Process or notice
- 72 C.J.S. *Process* (1987).

TEXTS:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 18. Process
 - § 18.1. In general
 - § 18.2. Issuance of writ and complaint
 - § 18.3. Officers authorized to serve process

- § 18.4. Time limits
 - § 18.5. Manner of service
 - § 18.6. Abode service
 - § 18.7. Substitute service
 - § 18.8. Subsequent Orders of Notice
 - § 18.9. Forms and procedures for Orders of Notice
 - § 18.10. Service on parties who are incompetent or incarcerated;
Service on third parties
 - § 18.11. Appearance of defendant
 - § 18.12. Defects in process
 - § 18.13. Constructive service; Attachment
 - 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S
CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 248. Service of process
 - h. Service on resident defendants
 - i. Service on nonresidents
 - j. Service on mentally incompetent defendants
 - k. Action by and against minors
 - l. Service requisite for alimony and support
 - m. Service on the State
 - n. Third parties
 - [State of Connecticut Judicial Branch. Do It Yourself Divorce Guide. \(1998\).](#)
 - BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR
CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE
(1998).
Chapter 12. Getting divorced: procedures and paperwork
 - Notifying your spouse /Service of process, pp. 276-278
 - Serving the absent spouse by certified or registered mail, pp. 279-
282
 - Serving the absent spouse by publication, pp. 283-285
- COMPILER:**
- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial
Branch Law Library at Middletown, One Court Street, Middletown, CT
06424. (860) 343-6560. [Email](#)

Section 5.3.3

Parties

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to proper or necessary parties to an action for dissolution of marriage in Connecticut and third party intervention
- STATUTES:**
- CONN. GEN. STAT. (2005).
Chapter 815j Dissolution of Marriage, Legal Separation and Annulment
§ 46b-43. Capacity of minor to prosecute or defend
§ 46b-47. Third party intervention re custody of minor children
§ 46b-54. Counsel for minor children. Duties
§ 46b-55. Attorney General as party. Paternity establishment
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
9-2 Continuance for absent or nonresident defendant
9-6 Joinder of parties and actions; interested persons as plaintiffs
9-7 _____. Joinder of plaintiffs in one action
9-8 _____. Consolidation of actions
9.11 _____. Interested persons as defendants
9-18 Addition or substitution of parties; additional parties summoned in by court
9-19 _____. Nonjoinder and misjoinder of parties
9-22 _____. Motion to cite in new parties
9-25 Change of name by minor children
10-18 Service of the pleadings and other papers; responsibility of counsel or pro se party; documents and persons to be served
10-19 _____. Method of service
10-20 _____. Proof of service
10-21 _____. Numerous defendants
10-22 _____. Several parties represented by one attorney
10-23 _____. Service by indifferent person
- CASES:**
- Manndorf v. Dax, 13 Conn. App. 282, 287, 535 A.2d 1324 (1988).
“Although interested in the defendant’s marriage to the husband, the plaintiff, as a nonparty to that marriage, had no right to maintain an action for its annulment.”
 - Salvio v. Salvio, 186 Conn. 311, 441 A.2d 190 (1982). "Since [the children]Gerald and Deborah had acquired no legal interest in the funds on deposit, they were not necessary parties for the purpose of establishing the trial court's jurisdiction over those accounts."
 - Derderian v. Derderian, 3 Conn. App. 522, 490 A.2d 1008 cert. den. 196 Conn. 810, 495 A.2d 279. "In the present action, a precise, underlying debt of the brother to the defendant [his sister] had been determined in the second dissolution of marriage action. That debt was the award of the marital home to the defendant. Since there was an established debt at the time of the present partition action, the brother was not an indispensable party in the

action."

- Manter v. Manter, 185 Conn. 502, 504-505, 441 A.2d 146 (1981). "Seeking custody or visitation rights, Allan Coombs moved on February 13, 1979, to intervene in the divorce action of *Manter v. Manter* under General Statutes 46b-57, which permits interested third parties to intervene in custody controversies before the Superior Court. At a preliminary hearing the trial court on April 2 granted Coombs standing for the expressly limited purpose of a visitation study by the family relations office. By supplemental order dated October 1, 1979, the court denied the motion to intervene on the dual grounds that no present dispute was then before the court and no facts were presented to qualify Coombs as an interested party under 46b-57. Coombs now appeals from that denial of his motion to intervene."
- Welfare Commissioner v. Anonymous, 33 Conn. Supp. 100, 102, 364 A.2d 250 (1976). "Indeed, there is no evidence in the Juvenile Court proceedings that does not tend to prove that the grandaunt provides a good home for the children and takes good care of them. Nevertheless, the commissioner claims that the Juvenile Court could properly find that the children are uncared for and homeless within the purview of General Statutes § 17-53. His claim is that the children are 'uncared for' because their mother is not taking care of them and is not providing a home for them and because their father has, either inferentially or explicitly, admitted that he cannot take care of them or make a home for them. The commissioner's claim, in short, is that the phrase 'uncared for' in General Statutes § 17-53 should be construed as if it read 'uncared for by each living biological parent.'"
- Sands v. Sands, 188 Conn. 98, 105-106, 448 A.2d 822 (1982) cert. den. 459 U.S. 1148, 103 S. Ct. 792, 74 L.Ed.2d 997. "The trial court could not ignore the fact that the state had a definite and imminent interest in this matter. Under these circumstances, the trial court clearly acted within its discretion in awarding \$1 per year alimony in order to protect a valid state interest."
- Vanderlip v. Vanderlip, 1 Conn. App. 158, 159, 468 A.2d 1253 (1984). "In this case, we cannot believe that the defendant was harmed by the refusal of the court to permit a continuance. On the day following the order to proceed immediately to trial, the defendant appeared. The usual order of trial was revamped in her favor. She was present at all relevant times. Under these circumstances, we are not persuaded that the trial court abused its discretion."

**WEST KEY
NUMBER:**

- *Divorce* # 70. Parties
#71 _____. Plaintiff
#72 _____. Defendant
#73 _____. Intervention
74 _____. Defense on behalf of state or public

DIGESTS:

- ALR DIGEST: Divorce and Separation
§ 7 Who may institute
§ 8 Interest of state; state as party
- CONNECTICUT FAMILY LAW CITATIONS: *Parties to actions*

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 10. Legal separation
§ 10.5. Parties
Chapter 17. Parties

- § 17.1. In general
- § 17.2. Capacity to maintain action
- § 17.3. Minors
- § 17.4. Third parties
- § 17.5. Death of a party

- ENCYCLOPEDIAS:**
- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§ 224-242. Parties
 - 27A C.J.S. *Divorce* (1986).
§§ 114-119. Parties
 - Annotation, *Power Of Incompetent Spouse's Guardian, Committee, Or Next Friend To Sue For Granting Or Vacation Of Divorce Or Annulment Of Marriage, Or To Make A Compromise Or Settlement In Such Suit*, 6 ALR3d 681 (1966).
 - Annotation, *Standing Of Strangers To Divorce Proceeding To Attack Validity Of Divorce Decree*, 12 ALR2d 717
 - Ralph V. Seep, Annotation, *Standing of spouse, ex-spouse, or putative spouse to sue as pension beneficiary under § 3(8) of Employee Retirement Income Security Act (ERISA)*, 112 ALR Federal 635 §§ 5,6 (1993).

COMPILER: Lawrence Cheeseman , Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

§ 5.4 Pleadings

CONN. PRACTICE BOOK § 25-11 (2005 ed.). Order of Pleadings

The order of pleadings shall be:

- (1) the plaintiff's complaint;
- (2) the defendant's motion to dismiss the complaint;
- (3) the defendant's motion to strike the complaint or claims for relief;
- (4) the defendant's answer, cross complaint and claims for relief;
- (5) the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;
- (6) the plaintiff's answer.

Sections:

- [§ 3.1. Complaint](#)
- [§ 3.2. Motion to Dismiss](#)
- [§ 3.3. Motion to strike](#)
- [§ 3.4. Answer/Cross Complaint](#)
- [§ 3.5. Amendment to Complaint](#)

Tables:

- [Table 4 Badouder v. Abdennur](#)
- [Table 5 Default in family matters](#)

Section 5.4.1

Complaint

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to complaints for legal separation in Connecticut.

DEFINITIONS:

- "The paramount role of a court when considering domestic relations cases is one of a 'court of equity.' The **court's equity powers** are essential to its ability to fashion the appropriate relief in domestic relations cases." LaBow v. LaBow, 13 Conn. App. 330, 351, 537 A.2d 157 (1988) [emphasis added].
- "The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution of a marriage. Without this wide discretion and broad equitable power, the courts in some cases might be unable fairly to resolve the parties' dispute, i.e., Where the sole asset of the parties is their residence to which both have contributed. Equity certainly does not contemplate such a result . . . Equity jurisdiction once obtained will be retained for the purpose of administering complete relief." Pasquariello v. Pasquariello, 168 Conn. 579, 585, 362 A.2d 835 (1975).

STATUTES:

- CONN. GEN. STAT. (2001).
 - § 46b-40. Grounds for legal separation
 - § 46b-44. Residency requirement
 - § 46b-45. Service and filing of complaint
 - § 46b-46. Notice to nonresident party; jurisdiction for alimony and support
 - § 52-45a. Commencement of civil actions. Contents and signature of process
 - § 52-54. Service of Summons
 - § 52-57. Manner of service upon individuals, municipalities, corporations, partnerships and voluntary associations.

FORMS:

- 2 CONN. PRACTICE BOOK (1997).
 - Form 504.1. Complaint for legal separation.
- MARY ELLEN WYNN AND ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
 - Form II-A-2. Complaint, p. 6.

COURT RULES:

- CONN. PRACTICE BOOK (2005).
- Chapter 8. Commencement of action
 - § 8-1. Mesne Process
 - Chapter 25 Procedure in family matters
 - § 25-2. Complaints for Legal Separation
 - § 25-5. Automatic orders upon service of complaint
 - § 25-7. Pleadings in General; Amendments to Complaint
 - § 25-23. Motions, requests, orders of notice and short calendar

CASES:

- Vanderlip v. Vanderlip, 1 Conn. App. 158, 160, 468 A 2d 1253 (1984).
"The unanswered complaint claimed only a dissolution of the marriage. The

defendant filed no claims for relief. The case was, however, presented to and tried by the court on the contested issues of support, alimony and property division. See *Falker v. Samperi*, 190 Conn. 412, 427, 461 A.2d 681 (1983). Because of this procedure, we need not consider any of the questions raised in *Tsopanides v. Tsopanides*, 181 Conn. 248, 435 A.2d 34 (1980). Compare *LaCroix v. LaCroix*, 189 Conn. 685, 457 A.2d 1076 (1983)."

- *LaCroix v. LaCroix*, 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) "On appeal, the plaintiff's sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant's cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error."
- *Winick v. Winick*, 153 Conn. 294, 299, 216 A2d 185 (1965). "The plaintiff was entitled to notice of, and an opportunity to be heard on, any application by the defendant for modification of the judgment. Accordingly, it was error for the court to modify the judgment on an oral motion and without notice to the plaintiff either specially or, in the usual practice, by the filing with the clerk of a motion as provided by 381 [now 17-46] of the Practice Book with service on counsel for the plaintiff as provided by 80 (2) [now 90-1]."

**WEST KEY
NUMBERS:**

- *Marriage* # 57
- *Marriage* # 58(1-8)
- *Divorce* # 88-95. Pleading
- *Husband and Wife* # 285 et seq.

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§§243-265. Petition or Complaint
- 27A C.J.S. *Divorce* (1986).
§ 99-106. Domicile or Residence of Parties
§ 143-149. Pleadings

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 10. Legal Separation
§ 10.4. Procedure
Chapter 19. Pleadings
§ 19.1. Pleadings in general
§ 19.2. Form of pleadings
§ 19.3. Complaint—Generally
§ 19.4. ____ Prayer for relief
§ 19.5. ____ Form
§ 19.6. ____ Official form
§ 19.7. Complaint in action for custody or visitation
§ 19.8. Form—Complaint in action for custody or visitation
§ 19.12. Joinder of multiple claims or causes of action
§ 19.13. Amendment of pleadings
§ 19.14. Service and filing of pleadings and other papers

- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
 Chapter 25. Procedure in family matters, general provisions
 § 25-2.1. Form of complaint; Required allegations
 § 25-2.2. Pendente lite: Temporary orders; Standing orders
 § 25-2.3. Judgment dissolving marriage
 § 25-2.4. Complaints for change of name
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S
 CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 Chapter 20. Family law procedures
 § 250. Pleadings in dissolution actions
 b. The complaint
 § 262. Legal separation
 c. Procedure
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
 Chapter 4. Motion Practice in Matrimonial Actions by Sandra P. Lax.

LAW REVIEWS:

- Cynthia C. George and Barbara M. Schelenger, *Family Law Jurisdiction*, 64
 CONNECTICUT BAR JOURNAL 455 (1990).
- Prof. Max Rubenstein, *Domicile or Jurisdictional Basis of Divorce Decrees*,
 23 CONNECTICUT BAR JOURNAL 280(1949).
- Francis X. Hennessy, *Jurisdiction - Notice in Matrimonial Matters*, 58
 CONNECTICUT BAR JOURNAL 213 (1984)

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch
 Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Section 5.4.2

Motion to Dismiss

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic references relating to the motion to dismiss in a dissolution of marriage proceeding in Connecticut
- DEFINITIONS:**
- “When a motion to dismiss is filed questioning subject matter jurisdiction it must be disposed of before there can be other proceedings.” Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 566 A2d 457 (1989).
 - “Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process.” Ibid., p.259
 - **Pendency of a prior action between the same parties** “is a ground for dismissal for the second action, for reasons of justice and equity and for the further reason that it is duplicative and therefore vexatious This rule does not apply, however, where the purposes of the two actions and the issues to be determined in them are different.” Ibid., p.263
- COURT RULES:**
- CONN. PRACTICE BOOK (2005).
Chapter 25. Procedures in Family Matters
§ 25-12. Motion to dismiss
§ 25-13. Grounds on Motion to Dismiss
(c) The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record.
(d) If an adverse party objects to this motion he or she shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.
§ 25-14 _____. Waiver and subject matter jurisdiction
§ 25-15 _____. Further pleading by defendant
- FORMS:**
- HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
Form III-A1. Motion to dismiss (court lacks jurisdiction over person and service of process was insufficient), p. 22
Form III-A-2. _____. (another action pending), p.23
Form III-A-3. _____. (inconvenient forum), p.24
Form III_A-4. Objection to defendant’s motion to dismiss or stay dated ____ 19 ____ (inconvenient forum)
 - 2 CONN. PRACTICE BOOK (1997).
Form 106.1. Motion to dismiss
- CASES:**
- Spilke v. Spilke, No. FA 00 0440636 S, 2002 Ct. Sup. 2918, 2918, 2002 WL 521313 (Mar. 15, 2002). "The defendant has moved to dismiss this action for dissolution of marriage on the grounds that he had previously

obtained an annulment of the marriage in an Israeli judgment which, he asserts, is entitled to recognition under the doctrine of comity."

- Panganiban v. Panganiban, 54 Conn. App. 634, 638, 736 A.2d 190 (1999). "We conclude that the trial court properly denied the motion to dismiss because the defendant did have sufficient contact with Connecticut and the exercise of jurisdiction in this case does not offend the traditional notions of fair play and substantial justice."
- Babouder v. Abdennur, 41 Conn. Supp. 258, 259, 566 A2d 457 (1989). "The defendant has filed a motion to dismiss the complaint on five grounds: (1) personal service upon the defendant was accomplished by trick, fraud or artifice; (2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under General Statutes § 46b-44; (3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief; (4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99; (5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the parties' minor children from Lebanon in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence." *The motion to dismiss was denied. See Table 7, below.*
- Rummel v. Rummel, 33 Conn. App. 214, 219, 635 A2d 295 (1993). "The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed."

**WEST KEY
NUMBERS:**

- *Divorce* #139.5. Dismissal, involuntary
#57-65. Jurisdiction, venue and limitation

ENCYCLOPEDIAS:

- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 279. Motion to dismiss
- 27A C.J.S. *Divorce* (1986).
§§ 201-204. Dismissal

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
§ 18.12. Defects in process
§ 19.8. Other responsive pleadings
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
§ 10-30.1. Function of motion to dismiss
§ 10-30.2. Special appearance not required
§ 10-30.3. Thirty day requirement
§ 10-31.1. Scope of motion to dismiss
§ 10-31.2. Circumstantial defects not to abate pleadings
§ 10-32.1. Subject matter jurisdiction cannot be waived
§ 10-33.1. Lack of standing (subject matter jurisdiction)
§ 10-34.1. Interlocutory appeal from denial of motion to dismiss not allowed
§ 10-34.2. Further pleading not allowed
§ 25-57.3. Visitation rights; persons other than parents
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions

c. Pleading by defendant

- FAMILY LAW PRACTICE IN CONNECTICUT (1996)
Chapter 4. Motion Practice in Matrimonial Actions, §§4.6, 4.7
Chapter 5. Motion Practice Before Trial § 5.20.

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch
Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Section 5.4.3

Motion to Strike

A Guide to Resources in the Law Library

SCOPE:

Bibliographic references relating to the motion to strike in a dissolution of marriage or legal separation proceeding in Connecticut

COURT RULES:

- CONN. PRACTICE BOOK (2005 ed.).
Chapter 25. Procedures in Family Matters
§ 25-16. Motion to Strike
 - (c) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint or cross complaint, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any claim for relief in any such complaint or cross complaint, or (3) the legal sufficiency of any such complaint or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint or cross complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint or cross complaint, or any part of that answer contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.
 - (d) A motion to strike on the ground of the nonjoinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to his or her identity and residence and must state his or her interest in the cause of action.
- §25-17. _____ . Date of hearing
- §25-18. _____ . Reasons
- §25-19. _____ . Memorandum of law
- §25-20. _____ . When memorandum of decision required
- §25-21. _____ . Substitute pleading part of another cause or defense

CASES:

- LaBow v. LaBow, 69 Conn. App. 760, 764, 796 A.2d 592 (2002). "Ronald LaBow [defendant] filed a motion to strike the petition for failure to state a claim for which relief can be granted, pursuant to Practice Book § 10-39. In ruling on the motion to strike, the court, Moran, J., sua sponte considered whether the court had subject matter jurisdiction over the petition for a new trial. Relying on *Summerville v. Warden*, 229 Conn. 397, 426, 641 A.2d 1356 (1994), the court concluded that the statute of limitations, General Statutes § 52-582, barred the petition for a new trial and that the court therefore lacked subject matter jurisdiction. The court dismissed the petition, and Myrna LaBow appealed.
- Gibson v. Gibson, 34 Conn. App. 139, 140, 640 A.2d 145 (1994). "The plaintiff in this dissolution of marriage action has filed a motion to strike the issue of postjudgment counsel fees from the defendant's brief. The

dispositive issue is whether this court's January 27, 1994 dismissal of the defendant's amended appeal, which raised the issue of counsel fees, precludes the defendant from addressing this same issue in his brief on the main appeal."

**WEST KEY
NUMBERS:**

- *Divorce* # 88-108. Pleading

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
§ 19.8. Other responsive pleadings
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
§ 10-39.1. Function of Motion to Strike
§ 10-39.2. Well-pleaded allegations admitted
§ 10-45-1. Judgment on the pleadings; motion for
§ 25-16.1. Misjoinder of parties in family matters
§ 25-22.1. Misjoinder of causes of action in family matters
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions
c. Pleading by defendant
- FAMILY LAW PRACTICE IN CONNECTICUT (1996).
Chapter 4. Motion Practice in Matrimonial Actions
Chapter 5. Motion Practice Before Trial

COMPILER:

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§ 5.4.4 Answer/Cross Complaint

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to answers and/or cross complaints in dissolution of marriage proceedings in Connecticut
- STATUTES:** CONN. GEN. STAT. (2005).
- § 46b-41. Complaint includes cross-complaints or cross actions. Whenever the word "complaint" is used in this chapter or section 46b-1 or 51-348a, it shall include cross-complaints or cross actions where appropriate.
- COURT RULES:** CONN. PRACTICE BOOK (2005 ed.).
- § 25-9. Answer, Cross Complaint, Claims for Relief by Defendant
 - § 25-10. Answer to Cross Complaint
- FORMS:**
- [Official Forms](#)
 - JD-FM-150. Divorce (Dissolution of Marriage) Complaint/Cross Complaint
 - JD-FM-160. Divorce (Dissolution of Marriage) Answer
 - *Answer and Cross Complaint—Form*, 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999) § 19.10.
- CASES:**
- Rummel v. Rummel, 33 Conn.App. 214, 218-219, 635 A2d 295 (1993) "The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed."
 - LaCroix v. LaCroix, 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) "On appeal, the plaintiff's sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant's cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error."
- ENCYCLOPEDIAS:**
- 27A C.J.S. *Divorce* (1986).
 - §§ 150-153. Answer
 - § 154. Cross action or counterclaim
- TEXTS & TREASTISES:**
- HANDBOOK OF FORMS FOR CONNECTICUT FAMILY LAWYERS (1991).
 - Why it is a good practice to file a cross-complaint.* Answer or Answer and Cross-Complaint: Notes & Comments, p. 9.
 - 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).

- Chapter 19. Pleadings
 - § 19.9. Answer, cross-complaint, and claims for relief by defendant
 - § 19.10. Answer and Cross Complaint—Form
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
 - Chapter 20. Family law procedures
 - § 247. Domicile and residence in cross-complaints
 - § 250. Pleadings in dissolution actions
 - c. Pleading by defendant
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
 - Chapter 25. Procedure in family matters, general provisions
 - § 25-9.1. Order of pleadings in family matters; Discovery in general
 - § 25-9.2. Pleading claims for relief

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Section 5.4.5

Amendment to Complaint

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to amendment of a complaint or cross-complaint.
- DEFINITIONS:**
- **Allowance of amendment:** "Much depends upon the particular circumstances of each case. The factors to be considered include unreasonable delay, fairness to the opposing parties, and negligence of the party offering the amendment." *Antonofsky v. Goldberg*, 144 Conn. 594, 597, 136 A.2d 338 (1957).
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 46b-67. Waiting Period. Effect of decree
- COURT RULES:**
- CONN. PRACTICE BOOK (2005 ed.).
- Chapter 25. Procedures in Family Matters
- § 25-2. Complaints for dissolution of marriage
 - § 25-3. Action for custody of minor child
 - § 25-4. Action for visitation of minor child
 - § 25-7. **Pleadings in General; Amendments to Complaint**
- Chapter 10. Pleadings
- § 10-59. Amendments; Amendment as of Right by Plaintiff
 - § 10-60. Amendment by Consent – Order of Judicial Authority, or Failure to Object
 - § 10-61. Pleading after Amendment
- FORMS:**
- HANDBOOK OF FORMS FOR CONNECTICUT FAMILY LAWYERS (1991).
Form II-A-3 "Motion to amend complaint," p. 7
Form II-A-4 "Amendment to complaint," p.8
- CASES:**
- *Welch v. Welch*, No. FA 00-0072505, 2002 Ct. Sup. 6446, 6450-6451 (May 17, 2002). "Here the defendant did not seek leave to amend her cross-complaint until after the trial. The plaintiff objects to the allowance of the amendment because it raises a new cause of action not previously alleged. In exercising its discretion in determining whether the court should allow the amendment, the court is guided by the considerations referred to in *Antonofsky* . . . Lastly, it is not fair to the plaintiff to allow the amendment where he has not been put on notice of it and where its necessity, if any, is caused by the defendant's own failure to prove the grounds alleged in her cross-complaint. The request for leave to amend the cross-complaint is denied."
 - *Cugini v. Cugini*, 13 Conn. App. 632, 636, 538 A.2d 1060 (1988). "The defendant also claims an abuse of discretion by the trial court in permitting an amendment to the complaint to allege as an additional ground for dissolution that he had been convicted of an infamous crime. This is one of the grounds upon which dissolution may be sought; General Statutes 46b-40(c)(9); and, in any event, it was not the ground upon which dissolution was granted in this case."
 - *Rodearmel v. Rodearmel*, 173 Conn. 273, 274, 377 A.2d 260 (1977). "On the

appeal, the defendant briefed six claims of error. Four of these are addressed to discretionary rulings of the court in granting the plaintiff permission to amend his complaint to add a new claim for relief, in assigning the defendant's interest in the marital residence to the plaintiff, in not awarding a greater amount of alimony and in not awarding to the defendant additional counsel fees. We find no error in any of these rulings as to each of which the trial court has broad discretion."

- LaBow v. LaBow, 171 Conn. 433, 441-442, 370 A2d 990 (1976). "The court below was correct in permitting the plaintiff to amend her complaint, adding alternative bases for the subject-matter jurisdiction of the court. Section 132 of the Practice Book allows a party to amend with leave of the court, which was here given. The court had jurisdiction of the action based on the plaintiff's residence in this state, even though the initial complaint alleged domicile."
- Baker v. Baker, 166 Conn. 476, 486, 352 A2d 277 (1974). "It is well settled that amendments, unless they allege a new cause of action, relate back to the date of the complaint While the plaintiff argues, with some justification, that the defendant should be estopped from asserting this claim in that it was at his request or insistence that the prayer for relief was amended so as to ask for a divorce rather than a legal separation, in light of the view we take of this claim it is unnecessary to decide that issue. The amendment, altering as it did only the prayer for relief, clearly did not change the factual bases or series of transactions upon which the complaint was based."
- Kilpatrick v. Kilpatrick, 144 Conn. 738, 739, 131 A2d 645 (1974). "The only other claim advanced by the defendant upon which we wish to comment is that at the time of trial the court permitted the plaintiff to amend her prayers for relief by adding a request for alimony. The record fails to show that the defendant raised at trial any claim of law in this regard. But if it is assumed that he did so, the amendment was within the discretion of the court and we find nothing to indicate that its discretion was abused."
- Kelsall v. Kelsall, 139 Conn. 163, 165, 90 A.2d 878 (1952). "An amendment to a complaint relates back to the institution of the action for some purposes; . . . but when it sets up a new and different cause of action it speaks as of the date when it is filed To be valid, it must state a cause of action which exists at that time. A cause of action must arise from a single group of facts Acts amounting to intolerable cruelty and acts amounting to desertion do not constitute a single group of facts. They are separate and distinct. An amendment to a complaint for divorce on the ground of intolerable cruelty which sets up desertion in a new count is the statement of a new cause of action."

WEST KEY NUMBERS

Divorce # 104 – Amended and Supplemental Pleadings

- 27A C.J.S. *Divorce* (1986).
§ 157. Amended and supplemental pleadings
- 24 AM. JUR. 2D *Divorce and Separation* (1998).
§ 262-265. Amendment, Supplemental Pleadings
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
§ 19.13. Amendment of Pleadings
- DUPONT ON CONNECTICUT CIVIL PROCEDURE (2002).
Chapter 25. Procedure in family matters, general provisions
§ 28-8.1. Amendments; Family matter complaint
- JEANINE M. DUMONT, PLEADINGS AND PRETRIAL PRACTICE (1997).
- Chapter VII. Amendments to Pleadings

COMPILER: Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Section 5.5

Reconciliation

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to reconciliation after legal separation
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 46b-65. Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.
(a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.
- FORMS:**
- MARY ELLEN WYNN AND ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
Form XVIII-A-2. Declaration of resumption of marital relationship, p. 264
- CASES:**
- Mitchell v. Mitchell, 194 Conn. 312, 481 A.2d 31(1984).
- TEXTS & TREATISES:**
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 10. Legal separation
§ 10.9 Reconciliation
- COMPILER:** Lawrence Cheeseman, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Section 5.6

Conversion of Legal Separation into Dissolution of Marriage

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the conversion of a legal separation into a dissolution of marriage.

DEFINITIONS:

- **DECLARATION OF RESUMPTION OF MARITAL RELATIONS:** "General Statutes 46b-65 (b) establishes an expeditious method by which the parties can convert a legal separation into a dissolution. Practice Book 472 [now 25-36] requires a party seeking to convert the legal separation into a dissolution to state, inter alia, whether the parties had resumed marital relations. If the parties have, in fact, resumed marital relations, they cannot proceed under the summary procedures provided in 46b-65(b), but must instead proceed under the general dissolution provision, 46b-40." Mignosa v. Mignosa, 25 Conn. App. 210, 213, 594 A.2d 15 (1991).
- **FINANCIAL ORDERS:** "Neither the trial court's memorandum of decision nor the judgment file contains any finding that the orders entered at the time of the legal separation were 'fair and equitable' in light of the circumstances existing at the time of the dissolution. Therefore, although we hold that the trial court properly granted the defendant's petition converting the parties' legal separation into a dissolution of marriage, the trial court's incorporation of the prior orders entered in the decree of legal separation into the decree of dissolution of marriage without a finding that the orders were 'fair and equitable' at the time of the dissolution was improper." Mignosa v. Mignosa, 25 Conn. App. 210, 216, 594 A.2d 15 (1991).

STATUTES:

- CONN. GEN. STAT. (2005).
 - § 46b-65. **Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.**
 - (a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.
 - (b) If no declaration has been filed under subsection (a) of this section, then at any time after the entry of a decree of legal separation, either party may petition the superior court for the judicial district in

which the decree was entered for a decree dissolving the marriage and the court shall enter the decree in the presence of the party seeking the dissolution.

COURT RULES:

- CONN. PRACTICE BOOK (2005 ed.).
§ 25-36. **Motion for decree finally dissolving marriage after decree of legal separation**
§ 25-37. —Notice and hearing

FORMS:

- 2 CONN. PRACTICE BOOK (1997).
Form 504.2. Petition for decree dissolving marriage after legal separation.
- MARY ELLEN WYNN AND ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).
Form XVIII-A-1a. Petition for decree dissolving marriage after legal separation, p. 261
Form XVIII-A-2. Declaration of resumption of marital relationship, p. 264

CASES:

- Bemonte v. Bemone, 44 Conn. Supp. 431, 435-436, 693 A.2d 739 (1996). "Absent a properly executed declaration of resumption of marital relations or intervention by court action opening the judgment for good reason, the judgment of legal separation, once the appeal period has expired, is final. The division of assets and liabilities is also final. An assignment of property is nonmodifiable. Hence, the court is without jurisdiction or other authority to modify a final judgment of legal separation insofar as it assigns property. The holding in *Mignosa* must give way to the holding of the majority in *Mitchell* which controls the outcome of the present case.
- Szot v. Szot, 41 Conn. App. 238, 241, 674 A.2d 1384 (1996). "In order to determine whether such orders were fair and equitable, the parties were entitled to an opportunity to present evidence in a hearing."
- Marsillio v. Marsillio, 12 Conn. Law Reporter 665, 666, 1994 WL 645954 (Bridgeport 1994). "To be added to the statutory requirement for a decree of dissolution of marriage after a decree of legal separation are two further requirements, one, that the parties have not resumed living together (*Mitchell v. Mitchell*, supra) and two, that the agreement of the parties entered into at the time of the decree of legal separation continues to be fair and equitable at the time of entry of the decree of dissolution. (*Mignosa v. Mignosa*, supra.)
- Mignosa v. Mignosa, 25 Conn. App. 210, 216, 594 A.2d 15 (1991). "Therefore, although we hold that the trial court properly granted the defendant's petition converting the parties' legal separation into a dissolution of marriage, the trial court's incorporation of the prior orders entered in the decree of legal separation into the decree of dissolution of marriage without a finding that the orders were 'fair and equitable' at the time of the dissolution was improper."
- Mitchell v. Mitchell, 194 Conn. 312, 326, 481 A.2d 31 (1984). "If the parties had resumed marital relations, even for a trial reconciliation, or the petitioner states in the petition that they did not resume and the defendant disputes that fact, the parties cannot proceed under the summary method of § 46b-65(b) but must instead proceed under the general dissolution provision, § 46b-40."

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 10. Legal separation

- § 10.10 Conversion to dissolution
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON'S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002).
Chapter 20. Family law procedures
§ 262. Legal Separation
c. Procedure

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Figure 4 Petition for decree dissolving marriage after legal separation

Petition for Decree Dissolving Marriage after Legal Separation

(Caption of legal separation action)

To the Superior Court for *(judicial district where legal separation was entered)*

The undersigned, a party to the above entitled action, respectfully represents

1. On *(date)* a judgment for legal separation was entered by this court in the above entitled action as of record appears.

2. The parties have not resumed marital relations since the entry of the decree, and no written declaration of the resumption of marital relations has been filed pursuant to Gen. Stat., § 46-61.

Wherefore the undersigned prays that the court enter a decree dissolving the marriage of the parties.

(Name of Petitioner)

By _____

His Attorney

(Caption of legal separation action)

APPLICATION FOR ORDER OF NOTICE

The undersigned respectfully represents:

1. The accompanying petition for a decree dissolving the marriage of the parties to this action is being presented to the court.

2. The adverse party is now within the state and is residing at

or

2. The adverse party is not within the state, but resides at

or

2. The place of residence of the adverse party is unknown.

Wherefore, the petitioner requests that the court fix a time and place for a hearing on the petition and make an order of notice thereof

by personal service

or

in such manner as the court deems reasonable.

Petitioner

By _____

His Attorney

(Caption of legal separation action)

ORDER FOR HEARING AND NOTICE

It is hereby ordered that a hearing on the foregoing petition be held at the Court House (*location and place*) on (*date*) at (*time*), and

It is further ordered that notice of the pendency of the petition and of the time and place of the hearing thereon be given to the adverse party

(if a resident of this state)

by personal service

(or)

(If a non-resident or residence is unknown insert such notice as the court deems reasonable)

at least _____ days before the date of the hearing.

By The Court (_____, J.)

Assistant Clerk

SUMMONS

To any Proper Officer:

By authority of the state of Connecticut you are hereby commanded to give notice of the pendency of the foregoing petition and of the time and place of the hearing thereon to (*name of adverse party*)

(if a resident)

by leaving a true and attested copy of the petition and of the foregoing order for hearing and notice with and in his hands

or

(if non-resident or residence is unknown insert such directions as may be contained in the order)

at least _____ days before the date of the hearing.

Hereof fail not, but due service and return make

Dated at (*place and date*) _____

Commissioner of the Superior Court

(P.B.1978; see Rules, §§ 472 and 473; Gen. Stat., § 46-61.)

6

GLOSSARY

ADULTERY: “For the purpose of this section, ‘adultery’ means voluntary sexual intercourse between a married person and a person other than such person’s spouse.” Conn. Gen. Stat. §46b-40(f).

CAUSE OF ACTION: “Even though a dissolution action is equitable in nature . . . it is a cause of action created by statute.” Babouder v. Abdennur, 41 Conn. Sup. 258, 260 (1989), 566 A.2d 457.

CLEAN HANDS DOCTRINE: “. . . we cannot now allow the plaintiff to profit from his own misrepresentations. One who seeks to prove that he is entitled to the benefit of equity must first come before the court with clean hands.” Sachs v. Sachs, 22 Conn. App. 410, 416, 578 A2d 649, cert. den. 216 Conn. 815(1990). “Although the clean hands doctrine may be a valid equitable defense in a dissolution action, it is a doctrine primarily for the protection of the court, not the parties.” Babouder v. Abdennur, 41 Conn. Sup. 258, 259, 566 A2d 457(1989) §3.3.2

COMMON LAW MARRIAGE: “To constitute a valid common law marriage there must first be a present agreement, that is, a present mutual understanding or a present mutual consent to enter at that time into the marriage relationship That mutual understanding or consent must be conveyed with such a demonstration of intent and with such clarity on the part of the parties that marriage does not creep up on either of them and catch them unawares. One cannot be married unwittingly or accidentally.” Collier v. Milford, 206 Conn. 242, 250-251, 537 A.2d 474 (1988).

EQUITY: “Even though a dissolution action is equitable in nature . . . it is a cause of action created by statute.” Babouder v. Abdennur, 41 Conn. Sup. 258, 260 (1989), 566 A.2d 457.

JURISDICTION: “is the power of a court to hear and to determine the cause of action presented to it Jurisdiction must exist in the three particulars: the subject matter of the case, the parties, and the process.” Babouder v. Abdennur, 41 Conn. Sup. 258, 259, 566 A2d 457(1989) §3.3.2

MANNER OF SERVICE: “Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” Conn. Gen. Stats. §52-57(a) §3.2.2

NONSUIT: “. . . the name of a judgment rendered against a party in a legal proceeding upon his inability to maintain his cause in court, or when he is in default in prosecuting his suit or in complying with orders of the court.” Jaquith v. Revson, 159 Conn. 427, 430, 270 A.2d 559 (1970).

PARTY: “‘Party’ is a technical word, and has a precise meaning in legal parlance. By it is understood he or they by or against whom a legal suit is brought, whether in law or equity; the plaintiff party or defendant, whether composed of one or more individuals, and whether natural or legal persons, (they are parties in the writ, and parties on the record); and all others who may be affected by the suit, indirectly or consequently, are persons interested, but not parties” Golatte v. Matthews, 394 F. Supp. 1203, 1207 (D.C. Alabama) footnote 5..

PROCESS: “shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff’s complaint.” Conn. Practice Book §8-1(a) §3.2.2

SUBJECT MATTER JURISDICTION: “The Superior Court clearly has jurisdiction over actions for dissolution of marriage in general, but the source of jurisdiction over a particular dissolution

action depends upon compliance with the statutory provisions which create and give the requirements for jurisdiction . . . There is no subject matter jurisdiction unless a statute provides for it.” Babouder v. Abdennur, 41 Conn. Supp. 258, 260, 566 A2d 457(1989)..... §3.3.2

USUAL PLACE OF ABODE: “It is clear that one’s ‘usual place of abode’ is in the place where he would most likely have knowledge of service of process . . . Its chief purpose is to ensure actual notice to the defendant that the action is pending . . . The usual place of abode is generally considered to be the place where the person is living at the time of service . . . It is not necessarily his domicile . . . and a person may have more than one usual place of abode . . . In the final analysis, the determination of one’s usual place of abode is a question of fact and the court may consider various circumstances.” Plonski v. Halloran, 36 Conn. Supp. 335, 335-336, 420 A.2d 117 (1980). See..... §3.2.2

VOID AD INITIO: void from its inception. “an annulment is decreed on the theory that the marriage is void ad initio.” Bernstein v. Bernstein, 25 Conn. Supp. 239, 240, 201 A.2d 660 (1964).

WAITING PERIOD:

- **Dissolution of marriage or legal separation:** 90-day waiting period for. Conn. Gen. Stat. §46b-67(a).
- **Annulment of marriage:** “Neither the ninety-day period specified in this section nor the six-month period referred to in section 46b-53 shall apply in actions for annulment and the court may proceed on any cause of action for annulment in the manner generally applicable in civil actions.” Conn. Gen. Stat. §46b-67(b)

Appendix A

OLR Bill Analysis

sSB 963 (as amended by House "A" and "B")*

AN ACT CONCERNING CIVIL UNIONS

SUMMARY:

This bill authorizes same sex couples to enter into civil unions, granting them the same legal benefits, protections, and responsibilities as married couples. It incorporates civil unions by reference in most statutes that use or define terms indicating a spousal relationship. It establishes eligibility, application, and licensing criteria; specifies who can perform civil union ceremonies; and sets forth record-keeping requirements. The bill (1) restricts civil unions to couples over age 18, (2) exempts people authorized to perform civil union ceremonies from liability for failing or refusing to do so, and (3) requires town clerks to give civil union license applicants copies of the relevant laws. Otherwise, the bill's substantive provisions and penalties are identical to current marriage statutes.

The bill also defines "marriage" as the union of one man and one woman. It establishes circumstances under which the state will recognize civil unions performed in other countries.

*House Amendment "A" adds the definition of marriage.

*House Amendment "B" eliminates the authority of parents or probate court judges to consent to civil unions involving partners under age 18.

EFFECTIVE DATE: October 1, 2005

BENEFITS, PROTECTIONS, AND RESPONSIBILITIES (§§ 14 & 15)

The bill specifies that the rights it extends to civil union partners may derive under statute, administrative regulations or court rules, policy, common law, or any other source of civil law. Generally, these fall into the following categories:

1. family law, including marriage, divorce, and support;
2. title, tenure, descent and distribution, intestate succession, wills, survivorships, or other incidents of the acquisition, ownership, or transfer (during life or at death) of real or personal property;
3. state and municipal taxation;
4. probate courts and procedure;
5. group insurance for government (but not private-sector) employees;
6. family leave benefits;
7. financial disclosure and conflict-of-interest rules;
8. protection against discrimination based on marital status;
9. emergency and non-emergency medical care and treatment, hospital visitation and notification, and authority to act in matters affecting family members;
10. state public assistance benefits;
11. workers' compensation;
12. crime victims' rights;
13. marital privileges in court proceedings; and
14. vital records and absentee voting procedures.

Excluded Laws (§ 15)

The bill does not incorporate civil unions by reference in the chapter of the General Statutes relating to marriage procedures and formalities. But it includes new provisions setting out the same procedures and formalities for applicants and parties to civil unions.

Civil unions are also specifically excluded under the bill from the statute that states that "the current public policy of the state is now limited to a marriage between a man and a woman" (CGS § 45a-727a(4)).

ELIGIBILITY CRITERIA (§§ 1, 2, 9, 10)

To be eligible to form a civil union, the bill requires that each party be of the same sex, not a party to another civil union or a marriage, and no more closely related to one another than first cousin. Unions between people more closely related are void.

People under age 18 can enter into civil unions only if a court has declared them emancipated (legal adults). By law, partners 16 or 17 years of age may marry if their parents consent, and those under age 15 may do so with a probate judge's consent. Under the bill, as well as existing marriage law, people under conservatorships must obtain their conservator's written permission. A conservator's refusal to permit the ceremony to proceed must be based on clear and convincing proof of recent behavior that would cause or create a risk of harm.

RECOGNITION OF FOREIGN CIVIL UNIONS (§ 13)

The bill declares civil unions performed in other countries involving at least one state resident valid, so long as the couple (1) could have entered into a civil union in Connecticut and the ceremony was performed in accordance with the other country's laws or (2) holds the ceremony in the U. S. consulate's jurisdiction, before that country's U. S. ambassador, minister, or other accredited consular official, and has a licensed clergy member officiate. Current law involving recognition of foreign heterosexual marriages is the same.

BACKGROUND

Legislative History

The Senate referred the bill to the Appropriations and Finance, Revenue and Bonding committees, which reported it favorably on March 21 and 30, respectively. The House referred the bill to the Planning and Development Committee, which reported it favorably on April 12.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea

25

Nay

13

Appropriations Committee

Joint Favorable Report

Yea

31

Nay

15

Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea

31

Nay
11

Planning and Development Committee

Joint Favorable Report

Yea
15
Nay
3